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STUDY CONCERNING THE MEDITERRANEAN INTER-STATE GUARANTEE FUND
AND LIABILITY AND COMPENSATION FOR DAMAGE RESULTING FROM
THE POLLUTION OF THE MARINE ENVIRONMENT

Note by the Executive Director

The attached study is a revised and updated version of the study which was prepared in December 1978 by Mr. Lahlou and Mr. Loukili, UNEP consultants, and distributed at the First Meeting of the Contracting Parties under the symbol UNEP/IG.14/INF.18. The views and recommendations contained in the study are those of the authors and do not necessarily reflect the views of UNEP.

In accordance with resolution 4 of the Convention for the Protection of the Mediterranean Sea, the participants in the First Meeting of the Contracting Parties recommended that a committee of experts should be established to study the possibility of setting up a Mediterranean inter-State guarantee fund (UNEP/IG.14/9, annex 5). It has not yet been possible to form this committee but the secretariat suggests that it should hold its first meeting in mid-1981. The committee of experts will have the present study before it.

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GENERAL INTRODUCTION

In accordance with recommendation 37 contained in the report of the Intergovernmental Review Meeting of Mediterranean Coastal States (Monaco, 9-14 January 1978), a "Study concerning Mediterranean inter-State guarantee fund and liability and compensation for damage resulting from the pollution of the marine environment" (UNEP/IG.14/INF.18) was prepared by two UNEP consultants.

This study was submitted for consideration at the Intergovernmental Review Meeting of Mediterranean Coastal States on the Mediterranean Action Plan and the First Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Related Protocols, held from 5 to 10 February 1979.

This meeting noted that the problems mentioned in document UNEP/IG.14/INF.18 were very important, although very difficult and very complex, and considered that they should be studied by a committee of experts from the Mediterranean coastal States and EEC.

In this connection, the Meeting adopted the recommendation made in annex V, paragraph 35, of the final report (UNEP/IG.14/9), 1/ in accordance with which the Executive Director was asked to convene a committee of experts at the beginning of 1981 and to report on the progress achieved by the committee to the Second Meeting of the Contracting Parties.

Pursuant to this recommendation, Doctor Keckes, Director of the Regional Seas Programme Activity Centre, acting in the name of the United Nations Environment Programme (UNEP), referred the matter to Mr. Lahlou and Mr. Loukili in order that the initial study (UNEP/IG.14/INF.18) might be brought up to date.

To this end, the authors of this study made a number of very important contacts in the course of an information and consultation tour in Europe (see annex I).

They would like to express sincere thanks to the UNEP secretariat for its kind assistance and to the various persons and organizations consulted for giving them the invaluable benefit of their acknowledged experience and co-operation.

The many events that have occurred since the preparation of the first version of the study (UNEP/IG.14/INF.18), together with the new developments in the area of liability and compensation for damage caused by marine pollution on a universal, regional and local scale, amply demonstrate the importance of updating the study.

These events speak for themselves: the disasters that have occurred recently have once more shown international public opinion the catastrophic, not to say aberrant, forms that pollution damage can assume. Since the Amico Cadiz incident 2/

1/ Annex V, para. 35, of document UNEP/IG.14/9 dated 20 April 1979.

2/ Le Monde of Tuesday, 11 December 1979, p. 43: "The damages claimed by the French Government as a result of the grounding of the Amico Cadiz amount to 1.2 billion French francs".

the recurrence of accidents ^{3/} to the marine environment should strengthen the vigilance of the Mediterranean coastal States and encourage them to adopt liability regulations and compensation machinery aimed at safeguarding this sea.

The determination of responsibilities and the establishment of compensation machinery to deal with cases of pollution in the Mediterranean will be the two essential concerns of the future committee of governmental experts.

The entry into force of the 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, the raising of the compensation ceiling of that Fund, the amendments to the TOVALOP and CRISTAL agreements, the re-examination of the limit on the shipowner's liability provided for in the 1969 Convention, the work in progress in the Legal Committee of IMCO on the extension of the civil liability régime to cover pollution caused by toxic substances, the incorporation of new provisions in the revised version of the informal composite negotiating text (ICNT) at the eighth session of the Third United Nations Conference on the Law of the Sea, etc. all constitute reasons not only for updating the initial study, but also for revising the analyses made therein.

Nevertheless, if this work is to have its desired pragmatic effect, field research will be necessary, ^{4/} especially since shipping traffic in the Mediterranean is steadily increasing in anticipation of the widening and deepening of the Suez Canal. ^{5/} The problems of passage through straits, which in the case

^{3/} Off-shore pollution in the Gulf of Mexico - Le Monde, 26 June 1979, p. 12. The Gulf of Mexico oil spill exceeded the oil spill from the Torrey Canyon.

A tanker of more than 300,000 tonnes caught fire in the Strait of Hormuz off the coast of Oman (November 1979) and broke in two.

Collision between the Independant, a Romanian oil-tanker and the Evenia, a Greek cargo ship, in the Bosphorus (Le Monde, 15 November 1979). Part of the 95,000 tonnes of crude oil carried spilled slowly into the sea. Shipping in that area was seriously disrupted and even halted because of the danger that the tanker might explode.

Shipwreck of a Turkish tanker off the coast of Spain.

Mysterious disappearance of a Norwegian tanker on the Brazil-Cape Town route.

Tension between the French and Netherlands Governments over pollution of the Rhine (see Le Monde, 5 December 1979).

^{4/} The results of this research will be published in due course as a supplement to the present study.

^{5/} On the spot contact should be made with the Egyptian authorities concerning the question of the volume of traffic through this waterway expressed in statistical data and of the part Egypt could play in the financing of a Mediterranean compensation mechanism (see UNEP/l8.P).

of the Mediterranean constitute access routes of undeniable importance, necessitate intensive study from the legal standpoint. To this end, the internationally agreed regulatory system for passage through the Strait of Malacca ^{6/} could be taken as a source of reference and a basis for the adoption of similar and effective legal machinery in the Mediterranean.

^{6/} Since this Strait is particularly comparable to the Strait of Gibraltar, with which it has a number of obvious points in common from the standpoint of international navigation, it has been suggested that contact should be made on the spot with the authorities of the States bordering the Strait of Malacca; this would enable a thorough evaluation to be made of the enforcement and preventive measures taken by the parties concerned by this traffic. Similar research would be undertaken with regard to the Bosphorus.

OUTLINE OF THE STUDY

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Conclusion: A genuine political will on the part of the coastal States is essential

PART I: THE SYSTEM OF LIABILITY FOR DAMAGE CAUSED BY MARINE POLLUTION

1. In this part of the study we shall discuss developments relating to the system of liability for damage caused by marine pollution which have occurred since document UNEP/IG.14/INF.18 was issued on 8 January 1979. To this end, we shall analyse the problem in the light of the recent work of the Inter-Governmental Maritime Consultative Organization (IMCO) and the results achieved at the most recent session of the Third United Nations Conference on the Law of the Sea.
2. In the second part of the study we shall deal with the problems involved in the compensation of victims of damage caused by marine pollution and shall analyse formulas for compensation for this kind of damage which might be adopted for the Mediterranean.
3. In view of the enormous damage that could result from pollution by substances other than oil, and in an effort to ensure fair and equitable compensation for the victims of this type of pollution, IMCO is currently studying the possibility of extending the special system of objective liability to cover pollution by noxious or hazardous substances (section I).
4. Furthermore, at its eighth session, the third United Nations Conference on the Law of the Sea achieved remarkable results in its work on the question of responsibility and liability for marine pollution (section II).

Steps towards the extension of the system of objective liability to cover damage caused by substances other than oil

5. When, in 1969, the diplomatic conference convened by IMCO in Brussels adopted an international private-law convention on civil liability for oil pollution damage, it was fully aware of the fact that persistent oils were not the only pollutants carried by sea. The carriage by sea of noxious and hazardous substances inevitably embodies considerable risks which can assume disastrous proportions similar to the risks resulting from the carriage of nuclear products by sea.
6. However, there are no international regulations governing this kind of activity; there is, in fact, a veritable legal vacuum in this area. Consequently, in such cases, customary law is applied, that is to say, the customary rules of liability in maritime law based upon fault, ^{1/} which the victim is required to prove in respect of the shipowner. All the uncertainties and vicissitudes underlying these rules are well known, as are the injustices which result from their application owing to the difficulty, not to say impossibility, of the victim's proving this particular kind of damage. This

^{1/} See the observations concerning the concept of liability for fault in the initial study (UNEP/IG.14/INF.18, pp. 12-16). Also see pages 301-303 (French text only) of the report presented to the French National Assembly by the Parliamentary Commission of inquiry established after the grounding of the Liberian ship Amoco-Cadiz on the coast of Brittany on 16 March 1978.

prompted IMCO to examine the possibility of extending the system of liability by derogation from customary law ^{8/} such as the system adopted in the Brussels Convention of 1969, for oil pollution to damage caused by hazardous substances.

7. Because of the particular interest aroused by this special system, we should perhaps recapitulate its general features before turning to the work in progress in the Legal Committee of IMCO on the extension of the principle of objective liability to other cases of pollution.

A. THE SYSTEM OF DEROGATION FROM CUSTOMARY LAW ESTABLISHED IN THE BRUSSELS CONVENTION OF 1969

8. It will be recalled that the Torrey Canyon accident ^{9/}, which occurred in 1967, highlighted the extent of the damage that could be caused by tankers and the insufficient compensation which resulted in such case from the traditional rules of liability under maritime law. That disaster emphasized the urgent need to establish a special system of compensation for oil damage, and priority was given to regulations concerning the compensation of victims of losses caused by this kind of damage.

9. The Convention on Civil Liability for Oil Pollution Damage of 29 November 1969, which was negotiated in Brussels under the auspices of IMCO and entered into force on 19 June 1975, establishes a special system of objective liability, which constitutes an exception to the traditional law of liability in maritime law. Nevertheless, this derogatory system would seem to have a number of shortcomings.

1. Features of the special system of liability established in the 1969 Convention

10. The Convention signed on 29 November 1969 created a form of liability that was objective, "attributed", limited and accompanied by an insurance obligation. This system is to a certain extent modelled upon the system used in nuclear law. ^{10/}

^{8/} We shall not revert to the analysis of the international nuclear conventions, which were the first to institute a system of objective liability by derogation from common law (see corresponding observations in UNEP/IG.14/INF.18, pp. 20 and 21).

^{9/} An oil-tanker carrying 117,000 tonnes of crude oil and flying the Liberian flag, the Torrey Canyon ran aground on 18 March 1967 on the Seven Stones, 15 miles off the east coast and 5 miles off the north coast of the Scilly Isles, outside United Kingdom territorial waters (see du Pontavice: La Pollution des mers par les hydrocarbures on the Torrey Canyon affair; Librairie Générale de Droit et de Jurisprudence, Paris, 1968).

^{10/} As it emerges from the following Conventions:

OECD Convention on Third Party Liability in the Field of Nuclear Energy of 21 July 1960, with its Additional Protocol of 28 January 1964, and the Supplementary Convention of 31 January 1963.

Vienna Convention on Civil Liability for Nuclear Damage of 20 May 1963.

Brussels Convention on the Liability of Operators of Nuclear Ships of 25 May 1962.

Brussels Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material of 17 December 1971.

For a bibliography, see foot-notes 43-46 on page 20, of document UNEP/IG.14/INF.18.

(a) Strict liability accompanied by a broad range of exemptions

11. Not without difficulty, the diplomatic conference of 1969 adopted the principle of objective liability. The question of the basis of liability, considered to be a key question, was the subject of animated discussion during the negotiations. The Soviet Union was particularly opposed to the establishment of objective liability, 11/ arguing that, with the exception of the 1962 Convention on the Liability of Operators of Nuclear Ships, the principle of fault was widely recognized in international maritime law. It felt that, in the case of damage caused by oil, the adoption of such a principle was not permissible, especially since there was no specific justification relating to the nature of the product carried (in this case oil) for moving towards the objectivization of liability. This would appear to be an unconvincing argument since the determining factor in the adoption of the principle of no-fault liability is not so much the more or less unusual nature of the activity in question as the particularly disastrous extent of the damage caused. Two alternatives were proposed, reflecting the controversy over the basis of liability and leaving delegations an entirely free choice.

12. Alternative A provided for the liability of the owner for all damage caused by escape or discharge of oil from his ship, unless he proved that neither he nor his agents had committed any fault in operation, navigation or administration. The owner is thus liable for fault, and this in fact amounts to relatively restricted liability. In other words, this is a system of presumption of fault 12/ on the part of the defendant, in this case the shipowner. He is presumed to be at fault and has to prove the contrary if he is to be released from his liability.

13. Alternative B, suggested by the French delegation, 13/ provided for the objective liability of the shipowner, who would be answerable for any pollution

11/ See IMCO document LEG CONF/4.Add.1; Finland, the United Kingdom, Liberia, Poland and South Africa expressed similar views. The Netherlands suggested that the liability of the owner should be extended not only to cases of fault, but also to cases of damage caused by a technical deficiency (cf. LEG CONF/4/Add.6/Rev.2).

12/ As proposed in IMCO document LEG/CONF/4, pp. 35-37 (French text). It should be noted that a similar formula is embodied in article 4 of the TOVALOP agreement, which makes no provision for releasing the shipowner from responsibility; he is presumed to be at fault unless he can prove the non-existence of fault on his part.

13/ In document LEG/CONF/4. The United States (LEG/CONF/4.), the Federal Republic of Germany (LEG/CONF/4/Add.1) and Sweden (LEG/CONF/4/Add.2) voted for alternative B. Canada proposed objective liability combined with the joint liability of the owner and the shipper (LEG/CONF/4/Add.3). Ireland proposed the objective liability of the shipper. See also the result of the vote on each of the formulas proposed in the official documents of the 1969 international juridical conference on marine pollution damage, IMCO, London, 1973, p. 691 (French text). It should be noted that the principle of the objective liability of the operator of an offshore installation was retained in the London Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Sea-Bed Mineral Resources of 1976, which was signed by six North Sea coastal States.

damage caused by oil which has escaped or been discharged from the ship as a result of the incident. This was the formula that was eventually adopted by the conference, the concept of fault having yielded to the concept of risk.

14. The 1969 Convention in fact established the objective liability, or "strict liability" as it is known in English-speaking countries, of the shipowner, based upon the mere existence of damage without any need to establish the fault of the shipowner (a sort of presumption of liability).

15. Nevertheless, although it is objective, this liability, is still not absolute, since it does not exclude any exemption from liability. Article III of the Convention sets forth a whole series of grounds for exemption from liability which inevitably impair the effectiveness and scope of the institution of objective liability. The range of grounds for exemption is much wider than that provided for in nuclear law. 14/

16. The owner to whom this liability is attributed is not liable if he proves that the pollution damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character (i.e. force majeure) 15/ (art. III, para. 2(a)). Similarly, the owner is exempted from all liability if he proves the existence of fraudulent behaviour by a third party, in other words, that the damage was caused by an act or omission done with intent to cause damage by a third party (art. III, para. 2(b)). He is also exempted from liability if the damage resulted wholly from the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids (art. III, para. 2(c)). 16/ Lastly, the owner may be released from liability if he proves that the damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person (art. III, para. 3). 17/

14/ In establishing the objective liability of the operator, the Brussels Convention on the Liability of Operators of Nuclear Ships (art. 2, para. 1) of 25 May 1962 limited the cases of exemption from liability to damage resulting from an act of war, hostilities, civil war or insurrection. No case of force majeure of natural origin appears on this list (art. 8). Furthermore, article 2, paragraph 5, stipulates that "If the operator proves that the nuclear damage resulted wholly or partially from an act or omission done with intent to cause damage by the individual who suffered the damage, the competent courts may exonerate the operator wholly or partially from his liability to such individual".

15/ The same formula is found in article 3, paragraph 3 of the Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Sea-bed Mineral Resources, signed in London on 1 May 1976. The signatory States were the Federal Republic of Germany, Ireland, the Netherlands, Norway, the United Kingdom and Sweden (Belgium, Denmark and France participated in the conference but did not sign the Convention).

16/ These two grounds for exemption contained in article III, paragraph 2(b) and (c), are not mentioned in the above-mentioned 1976 Convention.

17/ See 1976 Convention, article 3, paragraph 5.

(b) Attributed but not exclusive liability of the shipowner

17. The designation of the shipowner as the person liable for damage caused by oil pollution has given rise to a number of difficulties. Under the 1969 Convention the liable owner is the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. 18/ The conference had the following options: either to make the owner liable 19/, the solution which was finally adopted, or to attribute liability to the operator 20/ who provided and fitted out the ship.

18. Article I of the Convention attributes liability for oil pollution damage to the shipowner. This formula provides a greater guarantee and security for the victim in that the identity of the shipowner is easily ascertainable since, once the ship is registered, there can be no doubt about the identity of the owner. It is therefore a strict civil liability attributable to the owner, who is the only possible defendant.

19. It is, however, not an exclusive liability as it leaves open the possibility of bringing an action against third parties who are at fault, for example, an assistant. Similarly, the demand for compensation may be submitted directly to the insurer or the person providing the financial guarantee covering the owner's liability. 21/

18/ Art. I, para. 3. In accordance with article I, paragraph 2, person means "any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions." The same wording is employed in the 1976 London Convention, article I, paragraph 5.

19/ Ireland proposed the objective liability of the shipper (see IMCO document, LEG/CONF/4, page 138 of the French text). This formula was not adopted, one objection to it being that it was practically impossible to make the shipper liable as the cargo might change hands in the course of carriage.

20/ The following countries were in favour of the liability of the operator: Australia, Federal Republic of Germany, Liberia, Poland, the USSR, Finland, the United Kingdom and Sweden (see document LEG/CONF/4/Add.1 and 2). See also LEG/CONF/4/Add.1, pp 26 and 32 of the French text: the United States and the Netherlands successfully defended with contrary arguments the liability of the shipowner. Several countries drew attention to the ambiguity of the term "operator", which was not normally employed in maritime law, except in the Convention on the Liability of Operators of Nuclear Ships of 25 May 1962. That therefore gave rise to a problem of definition: the operator being generally the person who supplies and fits out the ship, what is the position of the person who has concluded a bare-boat charter, fitted out the ship and chartered it to another party? Is he an operator? A similar question arose in connection with the Torrey Canyon disaster. This illustrates the extreme difficulty of defining, identifying and registering the operator. Adoption of the liability of the owner is therefore a necessity.

21/ This is what emerges clearly from article 7, paragraph 8, of the Convention. A similar formula was adopted in the 1976 London Convention, article 8, paragraph 8. It may be noted that the nuclear conventions provide for a much stricter régime. The liability is exclusive and directly attributed, being concentrated on a single person: the operator of the nuclear installation or nuclear ship (1960 Paris Convention, art. 6; Vienna Convention on Civil Liability for Nuclear Damage, art. II, 5, of 20 May 1963; Brussels Convention on the Liability of Operators of Nuclear Ships of 25 May 1962). See LEG/XXXVIII/5, paragraph 9.

20. The liability envisaged in the Convention is an objective liability of a strictly private character and this in particular distinguishes it from the system of liability adopted in the nuclear conventions 22/ and a fortiori the convention on compensation for damage by space objects. 23/

21. The expressions employed in article I, paragraphs 1, 2 and 3, apply to the State itself. In spite of the unambiguous reservations of the Soviet Union, the Convention assimilates a tanker belonging to the State but used for exclusively commercial purposes as an ordinary tanker. The definition of the term "person" includes private and public bodies. The process of treating the State in the same way as other bodies and assimilating it to a private enterprise continues, culminating in the provisions of article XI, paragraph 2, under which, in the case of tankers owned by States and used for purely commercial purposes, the State undertakes to abandon its jurisdictional immunity. 24/ This solution

22/ Which provide for the "deferred" liability of the State (to the extent that it intervenes only after the amount of compensation payable by the main "attributée", namely the operator, has been exhausted in addition to the liability of the State as a private person (as operator). See P.M. Dupuy: "La responsabilité internationale des Etats pour les dommages d'origines technologique et industrielle", Pédone, Paris, 1976, pages 120-125.

23/ This is the Convention which was adopted and recommended by the United Nations General Assembly on 29 November 1971 to States for ratification (resolution 2777(XXVI)) and entered into force on 1 October 1972, bearing the title Convention on International Liability for Damage caused by Space Objects. This Convention is of considerable interest. It is true that it does not represent the first agreement on an international régime of objective liability for making good certain damage of technological origin, but it does represent the first time that such derogatory liability is imposed on the State as a subject of international law. The case remains unique today (see P.M. Dupuy op. cit.). Article II of this Convention provides that "A launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft in flight". (see commentary of the Convention by M.G. Marcoff "Traité de droit international public de l'espace" Editions Universitaires, Fribourg, Switzerland, 1973).

24/ This gave rise to very strong reservations by the Soviet delegation, which considered this formula as a violation of the principle - universally accepted in international law - that a State as shipowner should not be required to answer before a foreign civil court for damages caused by the ship and giving rise to a demand for compensation. (LEG/CONF/WP.19 of 27 November 1969).

corresponds to the concept well-established in maritime law which assimilates a State-owned merchant ship to a private merchant ship. 25/ Nowhere in the Convention is liability attributed to the State in its capacity as a subject of international law. The State, a public-law body, "is disguised" as a private-law legal entity. It is assimilated to an enterprise governed by private law. The competent courts will therefore be national courts and not an international court; as defendant, the State loses any immunity from jurisdiction. 26/

22. Furthermore, as in the case of many international conventions, the 1969 Convention imposes a number of obligations on contracting States, particularly with regard to the issue and control of insurance certificates, 27/ the purpose being to ensure the effective operation of the system of objective liability to be borne by the private polluter. Unless it has taken such measures, it would be quite normal, having regard to the relevant rules of international law, for a State which had ratified the Convention to find itself liable on the basis of the rule governing the non-observance of international obligations. What is involved then is liability for an internationally wrongful act, 28/ and this has nothing

25/ This brings us back to the classical debate between jure imperii acts, which are alone susceptible of immunity from jurisdiction, and jure gestionis acts (such as the operation of a merchant ship or enterprise), in respect of which immunity is completely excluded. It should be pointed out that article II excludes from the scope of the Convention damage caused by warships or State-owned ships used for non-commercial purposes (even though the United Kingdom and Norway were in favour of extending objective liability to that type of vessel; see LEG/CONF/4, pp. 95-97).

26/ The 1976 London Convention, article 13, repeats almost word for word article XI, paragraph 2, of the 1969 Convention.

27/ Art. VII, paras. 10 and 11.

28/ This is the case, for example, with the IMCO Convention for the Prevention of Pollution from Ships of 2 November 1973. It is quite clear from this Convention that the prescribed inspections and the issue of the certificate are not simple formalities for the responsible authority. Quite the contrary, negligence on the part of such authority would incur the liability of the State if a ship's failure to conform to the prescribed standards caused damage due to oil. We shall not repeat the observations on responsibility for a wrongful act contained on page 13 of the initial study (UNEP/IG.14/INF.18). See also reports of Mr. Ago, a judge in the International Court of Justice and former rapporteur of the International Law Commission (a subsidiary body of the United Nations) concerning responsibility for a wrongful act:

- (1) "Review of previous work on codification of the topic of the international responsibility of States", yearbook of the International Law Commission, (ILC) 1969, Vol. II;
- (2) "The origin of the international responsibility of States", ILC yearbook, 1970, Vol. II, pp. 177-197;
- (3) "The internationally wrongful act of the State, source of international responsibility", ILC yearbook, 1971, Vol. II, part I, pp. 199-274;
- (4) (Continued) ILC yearbook, 1972, Vol. II, pp. 71-160
- (5) Documents A/CN.4/292 and Add.1 and 2; (continued) ILC yearbook, 1976, Vol. II, part I, pp. 3-54;
- (6) Document A/CN.4/307 (continued);
- (7) Document A/CN.4/307/Add.1 of 17 April 1978 (continued).

to do with the system of objective liability to which the shipowner is subject. Such State liability is accessory to the liability of the private individual causing the pollution. It occurs only in residual fashion. 29/

23. Losses caused by oil pollution within the territory or territorial sea of the injured State are considered to be "damage" within the meaning of article II. The person responsible is required to compensate the victims for the expenditure they have incurred in preventing and limiting the pollution.

24. Furthermore, the Convention imposes on the shipowners concerned joint liability where damage appears to have been caused by oil which has escaped or been discharged from two or more ships. However, article IV, which governs such "joint" liability, appears to be somewhat obscure. While its application would scarcely give rise to any problem in the event of collision, what, on the other hand, would be the position in a case where two tankers allowed oil to escape, completely independently of each other, but where the two oil slicks polluted the same coast? This is the case which arises, for example, when tankers take advantage of the wreck of another tanker to clean out their tanks near the scene of the accident, thus aggravating the pollution; such tankers and the ship which originally caused the pollution are equally liable. It would admittedly be difficult to place on an equal footing as far as liability is concerned two ships whose damage-causing acts were not susceptible of any common measure. It is not, however, apparent from article 4 that ships are jointly responsible only if they are involved together in a single incident.

25. In addition, in conformity with a well-established tradition of maritime law, 30/ the Convention incorporates in the régime of objective liability of the owner a limitation as to its amount.

29/ See P.M. Dupuy, *op. cit.*,

30/ Deriving its origin from the middle ages and closely associated with the concept of the risks inherent in navigation by sea, the rule of the limitation of civil liability of the owner has always been accepted in maritime law.

It has been incorporated in all maritime law conventions:

International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea (art. 6), which was signed at Brussels on 29 April 1961 and entered into force on 4 June 1965 (as of 1 January 1978, four Mediterranean coastal States had ratified it; France denounced it on 2 December 1975);

International Convention for the Unification of Certain Rules relating to the Carriage of Passenger Luggage by Sea (art. 6), signed at Brussels on 27 May 1967 (ratified by only one Mediterranean State);

Convention relating to the Carriage of Passengers and their Luggage by Sea (arts. 7 and 8) signed at Athens on 13 December 1974, and its additional protocol signed in London on 19 November 1976;

Convention relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN), concluded at Geneva on 1 March 1973, not yet in force;

United Nations Convention on the Carriage of Goods by Sea (art. 6), signed at Hamburg on 31 August 1978.

See also the above-mentioned nuclear conventions and the 1976 London Convention, article 6.

(c) Liability limited in respect of its amount

26. Article V provides that the shipowner shall be entitled to limit his liability to an aggregate amount of 2,000 Poincaré francs for any one incident and for each ton of the ship's tonnage. 31/ However, this amount must not exceed a total of 210 million Poincaré francs, 32/ i.e. about 80 million current French francs or \$16.8 million. It is, however, made clear that the owner is deprived of the benefit of this limitation in the event of actual fault or privity; 33/ this does not have to be a serious fault or fraudulent act on the part of the shipowner 34/.

27. The system established by the 1969 Convention obviously constitutes a step forward as compared with the amount of the limitation provided for in the innocuous Convention of 1957. 35/ Although having a definitely wider scope

31/ A protocol was adopted in London on 19 November 1976 at the conclusion of the conference to revise the unit of account provisions of the 1969 Convention on Civil Liability. The limit of liability prescribed in article V, paragraph 1, of the 1969 Convention was thus amended as follows: "The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount of 135 units of account for each ton of the ship's tonnage. However, this aggregate amount shall not in any event exceed 14 million units of account." The unit of account referred to is the special drawing right as defined by the International Monetary Fund. It will be seen that, in practice, this protocol does not make any substantial change in the limit for liability as defined by the 1969 Convention.

32/ The Poincaré franc of 1928 is a unit of $65\frac{1}{2}$ milligrams of gold of millesimal fineness 900, or approximately 0.37 current French francs.

33/ Actual fault or privity may take various forms: a fault in design (weakness of the steering gear, inferior-quality steel used in its construction; absence of dual controls, etc.); fault regarding the recruitment and qualifications of the crew; fault in maintenance, fault as regards the navigation instructions given to the captain, etc.

34/ It is worth mentioning that one United Kingdom judge considers that the benefit of the limitation of liability is lost when there has been a fault of omission or negligence on the part of the shipowner.

35/ Signed under the auspices of IMCO, the International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships did not enter into force until 31 May 1968; seven Mediterranean countries had ratified it as of 1 July 1978.

comprising all sea-going ships, including tugs, and covering damage of any kind and not only damage caused by oil pollution, the 1957 Convention is not very detailed and is insufficiently comprehensive. 36/ Once it has entered into force, a new Convention on Limitation of Liability for Maritime Claims, signed in London on 19 November 1976, 37/ will replace the 1957 Convention. This new instrument does not, however, introduce any noteworthy changes and some countries have already proposed its revision.

28. In practice, the limits of liability will be multiplied by five for small ships and by only 1.5 for large ships, the amounts being in future expressed in special drawing rights 38/ and based on a sliding scale depending upon the tonnage of the ship. Similarly, like its predecessor, it gives no definition of the liability régime for the shipowner, while the conditions under which the benefit of the limitation will be lost will be practically unattainable, with the result that the owner will be deprived of the right to limit his liability only in the event of deliberate or inexcusable fault. 39/

(d) Obligation to establish a limitation fund and to maintain insurance

29. However, in order to benefit from the limitation of liability to which he may be entitled under the 1969 Convention, the owner or his insurers are required under the Convention (art V, para 3) to establish a guarantee fund equal to the limit of liability. 40/ This fund must be deposited with the court of the place

36/ The view has been expressed that if the régime of the 1957 Convention had been applied in the Torrey Canyon affair, it would, in the best possible circumstances, have permitted only partial and absurdly low compensation (about one quarter) for the damage and loss which at the time cost the French and United Kingdom Governments 30 million francs and imposed on them the additional burden of proving that the shipowner was at fault. In fact, the dispute was settled by negotiation. It should be noted that the 1969 and 1971 Conventions establishing a special régime for liability and compensation for damage resulting from oil pollution came into being precisely because of the difficulties which the Torrey Canyon accident had brought to light.

37/ Convention on Limitation of Liability for Maritime Claims, London, 19 November 1976; not yet in force.

38/ Chapter II, articles 6, 7 and 8.

39/ This is what emerges from article 4 of the Convention.

40/ In the Amoco Cadiz affair, for example, a limitation fund of this kind, amounting to about 77 million French francs, was set up with the Court of Brest on 27 April 1978 by Mutual London Steamship Owners, who were responsible for the insurance of the tanker.

where the incident occurred, and the court will assume responsibility for distributing the proceeds of the fund among the various victims. The establishment of such a fund will thus enable the owner to make good only damage whose amount does not exceed the ceiling of his insurance, i.e. 2,000 Poincaré francs per register ton of the ship, up to a maximum of 210 million Poincaré francs. The owner will also be able to obtain the release of his ship or his assets if they have been seized following a demand for compensation for the damage caused by the incident. Moreover, after the judgement, no entitlement to compensation may be exercised in respect of any assets other than the fund.

30. Taking as a basis the liability régime set up under the nuclear conventions, 41/ the 1969 Convention, in article VII, requires the owner of a ship registered in a contracting State and carrying more than 2,000 tons of oil in bulk as cargo to maintain insurance or other financial security under the conditions laid down in article V relating to the limitation of liability. 42/

31. It goes without saying that the 1969 Convention, which established a special liability régime whose originality and merits are widely recognized, suffers however, from a number of shortcomings.

2. Shortcomings of the régime established under the 1969 Convention

(a) A régime weakened by an exhaustive list of grounds for exemption

32. An analysis of the wording of the 1969 Convention, article III, paragraphs 2 and 3, brings out the multitude of "release" clauses excluding the strict liability which the owner is required to assume. As a result, this fairly wide range 43/ of grounds for exemption would undoubtedly appear to reduce the scope and effectiveness of the special régime of objective liability.

(b) Limited geographical scope

33. Similarly, the geographical scope of the Convention is unduly limited. wherever the accident occurs, only damage caused within the territory of a State, including its territorial sea, can be made good. Such legal rigidity is inappropriate for the fluidity of the marine environment, especially since the polluting agent, which is of an anarchic character, recognizes no frontiers. Thus, article II arbitrarily excludes from its scope any damage occurring in the exclusive economic zone. The paradoxical situation created by this text has prompted certain countries to ask IMCO to consider the possibility of revising

41/ E.g. article III, paragraph 2, of the Convention on the Liability of Operators of Nuclear Ships, signed at Brussels on 25 May 1962.

42/ There is a similar provision in article 8 of the London Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Sea-bed Mineral Resources.

43/ Article 3, paragraphs 3, 4 and 5 of the London Convention seems less liberal than article III of the 1969 Convention.

the geographical scope of the Convention in the light of developments with regard to the law of the sea, and in particular the growing acceptance of the concept of the exclusive economic zone. ^{44/} The revised negotiating text which resulted from the eighth session of the third United Nations Conference on the Law of the Sea recognizes, in respect of the coastal State, the existence of an exclusive economic zone (arts. 55, 56, para. 1(b) (iii), 58, para. 2, 194, para. 2.) It should be noted that over 40 countries have already established a 200-nautical-mile economic zone (two of these are Mediterranean countries, but they have not yet extended this measure to their Mediterranean coast).

(c) The liability ceiling has been exceeded

34. Although the principle of the limitation of liability does not give rise to any particular criticism, its application falls short of providing adequate compensation for the victims of substantial and catastrophic pollution of the Amoco-Cadiz type.

35. Accordingly, at its thirty-eighth session the IMCO Legal Committee had before it a proposal for the revision of the limit of liability provided for in the 1969 Convention. Similarly, under a resolution adopted at its second session, the Assembly of the International Fund for Compensation for Oil Pollution Damage requested IMCO to consider the possibility of altering the liability limits prescribed in the provisions of the 1969 Convention (on civil liability for oil pollution damage) and the 1971 Convention (establishing an international fund for compensation for oil pollution damage).

36. Several arguments were put forward in support of a revision of the liability limit. In the opinion of a number of delegations represented on the Legal Committee, the fact that the 1969 Convention had not yet been universally accepted was in a large measure due to the inadequacy of the liability limits. Another important reason for revising the Convention was said to be the fact that the relatively low liability limits applicable to small ships were often entirely insufficient for the damage they caused. It was pointed out that the ability of the insurance market to provide adequate cover had substantially increased over the previous ten years - an encouraging factor which should therefore serve as a basis for the determination of new limits. ^{45/} Reference was also made to the inflation which had characterized the 1970s. Therefore, having regard to the new circumstances which had arisen since the adoption of the 1969 Convention, a proposal was made for the adoption of a minimum flat rate for small ships.

^{44/} Article 2 of the London Convention has taken account of this development by including the economic zone within its scope (art. 2(a) and (b)).

^{45/} The Amoco Cadiz disaster made it necessary to consider higher limits for the compensation payable to the victims of oil pollution damage. It was pointed out that the determination of the limits provided for in the 1969 Convention had been influenced by the amount of cover which the insurance market could provide at the time and that the situation had changed radically since the adoption of that Convention. The limits laid down should be raised as the cover which the insurance market can provide now makes that possible. The insurance market could provide cover of up to \$100 million (see LEG XXXVII/7 and LEG XL/5).

37. In that context the Legal Committee invited the secretariat of the International Fund and the secretariat of IMCO to prepare a study on certain legal problems to which the question of the revision of liability limits might give rise. The Committee also invited the insurers to study the repercussions of the revision of liability ceilings on the insurance market.

(d) Extremely limited scope

38. The 1969 Convention does not cover all oil pollution damage, but only that caused by ships actually carrying oil in bulk, that is, as cargo. Damage caused by heavy oils carried in drums is thus excluded. Similarly, damage caused by oil from the bunkers of a tanker sailing without any cargo is not included in the categories of damage listed in article I, paragraphs 5 and 6. In so far as the vessel was navigating in ballast, the Convention would not have been applicable as regards the compensation of the victims of the Olympic-Bravery disaster, which occurred in 1976; the tanker was carrying in its bunkers the 1,250 tonnes of fuel oil for the purposes of propulsion and the generation of electricity, and not as cargo. In addition, damage caused by explosion or fire is not included within the scope of the Convention.

39. It is clear from the recent work of IMCO that the Legal Committee has already received suggestions from some delegations for including "non-persistent" oil in the definition of the term "oil" and extending the scope of the Convention to pollution caused by the discharge of oil from the bunkers of unladen tankers. 46/

40. The régime set up under the 1969 Convention relates only to damage resulting from pollution by persistent oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil. Thus, apart from the special régime for civil liability in respect of the carriage of nuclear products by sea, pollution damage resulting from the spillage of hazardous substances other than oil is governed by the public-law régime set up under the 1957 Brussels general convention on the limitation of the liability of shipowners. It may be recalled that this convention limits the liability of the shipowner to 370 Poincaré francs per register ton, does not establish a presumption of liability on the part of the owner, and makes no provision for a guarantee of solvency of the debtor. This amounts to saying that, in the event of damage caused by discharge from a cargo of noxious and toxic chemicals or by the explosion of a methane-tanker, the compensation of the victims would undoubtedly remain insignificant in relation to the losses suffered, which might greatly exceed damage caused by oil.

46/ An informal working group consisting of technical experts, under the chairmanship of Mr. L. Lamme (Netherlands), has been given the task of studying the following questions: the importance of the foreseeable damage which may be caused by the carriage of hazardous substances by sea, and categories of substances which are in fact carried by sea; the use of a schedule or schedules and the factors to be taken into account in drawing up such schedules, and the possibility of limiting the scope of the Convention to substances carried in bulk or extending it to substances carried in packages. This group has so far considered that it would be appropriate to adopt a fairly limited schedule of substances likely to cause serious danger and that, having regard to the practical impossibility of drawing up a schedule of substances carried in packages, only substances carried in bulk would be envisaged. (See IMCO documents LEG XXXIX/5, annex I, LEG XLI/5, and LEG XL/5, paragraph 55).

41. In view of this anachronistic situation, IMCO has set in train the study of the possibility of extending the special regime providing for derogation from customary law, established under the 1969 Convention, to damage caused by agents other than oil 47/ and has included the question on its agenda.

B. CONSIDERATION BY THE IMCO LEGAL COMMITTEE OF A DRAFT CONVENTION ON LIABILITY AND COMPENSATION FOR THE CARRIAGE OF NOXIOUS AND HAZARDOUS SUBSTANCES BY SEA

42. The occasionally formidable damage caused by the carriage of toxic substances has made it necessary to establish a special system of liability, the existing customary law being inadequate to provide victims with appropriate compensation. It was, however, very quickly seen that there were many difficulties which would be encountered in such an undertaking aimed at establishing a new convention applicable to substances other than persistent oils. Certain difficulties of a technical character thus became apparent (schedule of noxious products, definition of the hazardous characteristics of the polluting agent). This prompted the Legal Committee, at its eighteenth session, 48/ to send questionnaires to the Governments and organizations concerned in order to obtain from them the information necessary for proceeding with its work. The replies to the questionnaires were transmitted to the Legal Committee at its twenty-sixth and thirty-second sessions in documents LEG XXVI/4 and Add.1 and 2, LEG XXXII/9/1 and Add.1 and 2, and LEG XXXIII/WP/1. Since then, the Legal Committee has included on its agenda questions relating to liability for the carriage of hazardous goods.

43. During the Committee's work, it considered the idea of setting up a fund comparable to that established by the 1971 Convention for oil, the fund to be financed by the petroleum industry. However, in view of the very marked differences on all points between the positions of the various industries concerned with the carriage of noxious substances by sea, this idea was rapidly abandoned. 49/

44. Various points of view were expressed as to the scope of the proposed new convention. Some delegations felt that the convention should apply to a limited number of exceptionally and highly hazardous substances. Some stressed that the draft should not be confined to substances considered to be intrinsically hazardous since some substances which were not intrinsically dangerous were capable of causing equally serious damage when carried in large quantities or when they were near particularly vulnerable areas. Other delegations pointed out that the convention should not be confined to covering damage of a catastrophic extent.

47/ The diplomatic conference responsible for drawing up international regulations concerning oil pollution had already adopted in Brussels in 1969 a resolution recommending IMCO to intensify its work on the various aspects of pollution by substances other than oil.

48/ See IMCO document LEG XXXIV/7, pages 2-5. (French text)

49/ For fuller details on this question of a fund, see part II of the present study. See also IMCO document LEG XXXVI/5 of 23 June 1978, paragraphs 8-17.

45. Most members of the Committee thought that the scope of the convention should be restricted to exceptional risks and to damage caused by particular substances. The question of extending the geographical scope of the future convention to damage occurring within all zones under the jurisdiction of the coastal State was also envisaged. 50/

46. In the Committee very marked divergences between the positions of delegations became apparent, mainly on the following key points:

- Designation of the person liable;
- Nature of the liability to be laid down;
- Extent of that liability.

CONTESTED POINTS:

(a) The designation of the person liable

47. At its thirty-sixth session the Legal Committee had before it a joint proposal from Sweden and the Netherlands contained in document LEG XXXVI/2. This document proposes a system under which liability would be borne entirely by the parties concerned with the cargo, together with an alternative to that system under which liability would be borne by both the shipowner and the shipper. According to its sponsors, this system had the advantage of applying to a limited number of extremely hazardous substances and to damage caused by toxicity, fire, explosion or pollution. The proposal also made it clear that the parties concerned with the cargo (that is the cargo-owner or the shipper) would not be subject to the same liability limitations as shipowners under the 1957 and 1976 Conventions. In support of this formula it was argued that persons representing the cargo were in a better position to prevent damage and were better acquainted with the cargo. Some delegations referred to the nuclear law conventions and proposed that liability should be attributed to the shipper, irrespective of the negligence of the shipowner, operator, shipping agents or other third parties. In that case, the liability of the shipowner would be involved only in the event of action for recourse.

48. Other delegations, however, pointed out that the shipowner was more readily identifiable and that he already had the benefit of various liability insurances while there had never been liability insurance in respect of cargo. In accordance with the proposals made, the practical solution would be to place on the carrier entire responsibility for the carriage of noxious substances. 51/ Such a solution would be less costly from the insurer's standpoint than that of placing responsibility on the cargo-owner.

50/ It was also proposed that expenditure incurred on preventive or remedial measures should be included in the reparable costs. See LEG XLI/5, paragraphs 37-48.

51/ The representative of the International Union of Marine Insurance maintained that practical considerations concerning the insurance market suggested that the main responsibility should be borne by the carrier. (Cf. LEG XXXIV/7, para 31). That formula would eliminate the legal difficulties which victims at present encounter when they have to choose the appropriate defendant, by giving the victim the right to institute proceedings against the shipowner, without however prejudicing the right of recourse of the shipowner against interests representing the cargo.

49. It would be unacceptable to relieve the carrier of liability to third parties for consequences resulting from the carriage of substances over which he has sole control. In support of that solution, mention was made of the difficulty which had been encountered at the United Nations Conference on the Carriage of Goods by Sea in agreeing on a definition of the term "shipper".

50. The idea of a mixed system, under which the shipowner would be liable up to certain limits and the shipper beyond those limits, was also put forward. 52/

(b) The nature of the liability

51. The discussions in the Legal Committee brought out the close connection between the question whether liability should be based on fault or whether it should be objective, and the choice of person who would be liable, together with the scope of the risks and damage covered. Thus if the proposed convention was to cover only a small number of hazardous substances embodying a high risk, objective liability should be provided for.

52. Another opinion expressed was that if the convention was to cover a wider range of substances, it would perhaps be necessary to provide for different liability régimes for each category of noxious substance. Thus objective liability would be established in the case of intrinsically hazardous substances and liability based on other criteria in respect of less toxic substances.

53. On the question of the liability of the owner, some delegations did not want the proposed convention to depart from the traditional régime of liability based on fault.

54. Another formula proposed involved imposing objective liability on the shipper. The owner's responsibility would be incurred only in the event of negligence. It was also suggested that objective liability should be borne by the owner and the shipper, in which case, however, the latter would make a fixed contribution. Arguments were also put forward in favour of objective liability which would be stricter than in the 1969 Convention and would be based on the régime adopted in nuclear law, having regard to the intrinsically hazardous nature of the substances carried and taking into account the enormous risk which would result from accidents.

55. In the discussions which took place within the Legal Committee there were very lengthy arguments in favour of the principle of objective liability, especially for extremely hazardous substances. It was, however, made clear that there should be a limitation of liability, which would be considered as a corollary of the rule of no-fault liability.

(c) The extent of liability

56. As far as the shipowner is concerned, most delegations felt that it would be advisable to retain the limitations established in the 1976 Convention on Limitation of Liability for Maritime Claims.

52/ Thus the shipowner is liable up to the ceiling established in the 1976 Convention, beyond which liability passes to the shipper.

57. With regard to the shipper it was felt that he should assume a supplementary liability for damage not covered by the amounts fixed in respect of liability in the 1976 Convention. In such a case, however, the cargo-owner should also benefit from some form of limitation. ^{53/}

58. In conclusion, the Committee has in general agreed that, for incidents of catastrophic proportions, neither unlimited liability nor the liability régime provided for in the 1976 Convention would be sufficient. The 1976 régime is not appropriate in particular on account of the relatively low limits fixed for small ships. ^{54/} As for unlimited liability, such a solution would have a negative effect in that it would bankrupt persons found to be liable without, however, providing for compensation for the victims.

^{53/} Several possibilities were envisaged for calculating the limit of liability of shippers (see LEG XXXIV/7, paragraph 50). In addition, another formula was proposed making the shipper liable for an unlimited amount (see LEG XXXIV/7, paragraph 51).

^{54/} Although, as has already been seen, the limits have been increased compared with those of the 1957 Convention (see pages 38 and 39 above).

PART II. COMPENSATION FOR POLLUTION DAMAGE IN THE SPECIAL CONTEXT OF THE MEDITERRANEAN SEA: POSSIBLE FORMULAS FOR COMPENSATION FUNDS FOR THE VARIOUS SOURCES OF POLLUTION

Foreword

59. Among the sea-covered areas of the globe where shipping activity is most intense, the Mediterranean is a region characterized by heavy international maritime traffic. In fact, this part of the world is traversed by a totally disproportionate amount of the world's oil-tanker traffic, with disquieting consequences as far as pollution and the resultant quality of the marine environment are concerned.
60. Although an accident on the scale of the Amoco Cadiz disaster has not yet occurred in the Mediterranean (the time and place of accidents are, by definition, impossible to predict), local operational pollution exists in the Mediterranean as a natural consequence of the carriage of crude oil. However, this kind of pollution, which has occurred regularly for several decades, is far more difficult to control than on the world's other shipping lanes because of the nature of this semi-enclosed sea, whose water is renewed only once every 80 years. 55/
61. Out of a total of 26,895,000 barrels of crude oil a day (1,339,370,000 tonnes a year) carried on all shipping routes, 23 per cent is carried through the Mediterranean (arrival, departure or both), i.e. 6,205,000 barrels a day (309 million tonnes). 56/
62. Obviously, this traffic passes through the access routes to the Mediterranean, namely, the Strait of Gibraltar, the Dardanelles, the Bosphorus or the Suez Canal. Knowledge of the legal régime governing passage through these internationally vital waterways is essential for this study of the problem of compensation for pollution damage.
63. The access routes to the Mediterranean must be analysed in order to assess the adequacy of the international agreements concluded between private companies or States concerning compensation for pollution damage and the latent dangers which threaten the Mediterranean. Straits are by definition narrow sea areas that are vulnerable to pollution. If an accident occurs, can the existing legal instruments deal with this special situation and compensate the victims? Two hundred thousand tonnes discharged into this area (Amoco Cadiz type pollution) would affect practically the entire Mediterranean and would be a real catastrophe.
64. Another threat to Mediterranean ecosystems, fishery resources and the development of coastal areas for recreational purposes is the direct influx of pollutants from rivers flowing into the Mediterranean through the territories of coastal and non-coastal States. 57/

55/ The International Convention for the Prevention of Pollution from Ships, London (1973) constitutes an important development for the Mediterranean countries. In accordance with certain provisions of this Convention, which considers the Mediterranean as a "special area", discharges from any oil tanker and any ship are prohibited in Mediterranean waters even beyond the 100-nautical-mile limit.

56/ See Méditerranée an 2000, No. 37, fourth quarter 1976, page 49. Article by Giuseppe Sacco entitled "1 pour cent de pétrole perdu en mer".

57/ See Workshop report No. 3 of the Intergovernmental Oceanographic Commission, Monte-Carlo, 9-14 September 1974, UNESCO.

65. We thus intend first to consider the access routes, which are to a certain extent responsible for the physiology of the Mediterranean.

66. We shall then consider the existing legal instruments relating to compensation for pollution damage, particularly from the standpoint of the changes which have occurred in this area since the initial study was prepared (UNEP/IG.14/INF.18).

67. The study of the Mediterranean from these various standpoints will enable us to make a diagnosis of the specific situation of this sea and consider the remedies required. These we shall call possible Mediterranean formulas for lines of research and study.

CHAPTER I: THE PHYSIOLOGY OF THE MEDITERRANEAN

Access routes

68. As is well known, oil-tankers or ships carrying various kinds of chemical or other products enter the Mediterranean through the Suez Canal, the Strait of Gibraltar, the Bosphorus or the Dardanelles. Although the current work on the widening and deepening the Suez Canal will lead to a substantial increase in oil-tanker traffic on this shipping route, the provisions of the future International Convention on the Law of the Sea concerning the legal régime for passage through straits embody the principle of the right of transit passage for ships of all kinds and this undoubtedly endangers the economic security of the coastal States of this semi-enclosed sea. The establishment of a right of transit passage different from the concept of innocent passage has the effect of permitting free and unconditional access to the Mediterranean regardless of the type of ship concerned (merchant ships, warships or nuclear ships). Free and uncontrolled passage constitutes a potential threat to the security of this sea, which has already been recognized as a special area.

69. The freedom of navigation advocated and stubbornly defended by the maritime Powers must surely be synonymous with the implementation of their military strategy in this region rather than an expression of any concern to expand international trade.

Section I: The Suez Canal

70. The Suez Canal's economic importance for world trade arises from its geographical situation. Because it links the Mediterranean to the Red Sea, this waterway eliminates the need to sail round the Cape of Good Hope and provides a short-cut for ships trading between east and west. The ports of the Red Sea, the Arabian Gulf, the Arabian Sea, the Bay of Bengal, south-east Asia and the Far East become directly accessible to those of the eastern seaboard of North America, North Africa and the Middle East. Distances on the main shipping routes are on the average reduced by half by virtue of the existence of the Canal.

71. While establishing itself as one of the world's most important merchant shipping routes, the Canal began to reflect the growing concern of the world economy with regard to oil from the Middle East as a major source of crude oil supplies. The Canal provided the link between the crude oil sources in the Arabian Gulf and the refineries in Europe, North America and the Caribbean.

72. Until its closure as a result of the 1967 war, the Canal played a vital role in the world trade boom. In 1966, for example, 14 per cent of world shipping passed through the Canal and oil shipments accounted for 73 per cent of that traffic. 58/

73. The closure of the Canal in 1967 resulted in an immediate and staggering rise in shipping costs because more circuitous, and hence more costly, routes had to be used. 59/ The Canal was reopened to international shipping in June 1975. However, the world recession, changes in the size of oil-tankers and transport costs have led to important changes in the volume and distribution of tanker traffic through the Canal.

74. In 1977, 33.9 million tonnes of oil and petroleum derivatives passed through the Canal out of a total traffic potential of 627 million tonnes.

75. At present the Canal can take only vessels of up to 75,000 tones deadweight and 250,000 tonnes in ballast. However, as a result of the work currently in progress on the widening of the Canal, its oil-tanker traffic will increase substantially within the next four years. This will lead to an increase in traffic in the Mediterranean (fewer oil-tankers will go round the Cape) and larger vessels, both in size and in terms of tonnage of fuel-oil transported, will pass through the Canal. One can only wonder about the consequences of the foreseeable increase in traffic in the Mediterranean in the very short term for navigational safety in the region.

76. The Egyptian authorities have already begun to implement a two-stage plan to widen the Canal:

The first stage of this plan is intended to permit the passage of:

Vessels having a breadth of between 11.5 and 16 metres, and of 150,000 tonnes deadweight and 300,000 tonnes in ballast.

This first stage should be completed by about 1980.

The second stage of the plan is intended to permit the passage of:

Vessels having a breadth of between 11.5 and 20 metres.

When the second stage is completed (1983-1984), tankers of 260,000 tonnes deadweight will be able to pass through the Canal.

77. The fact that such large vessels carrying such large cargoes will be able to sail through the Canal will inevitably make traffic in the Mediterranean even heavier.

58/ See H.P. Drewry (Shipping consultants) Ltd., London, No. 62 in series, May 1978: "The Suez Canal and its impact on tanker trade and economics". The other figures mentioned in connection with the Canal are derived from the same source.

59/ UNCTAD has estimated that between 1967 and 1971 the closure of the Suez Canal led to a total increase of over \$2,800 million in oil carriage costs.

78. Thus, by the end of the first stage, over 37 per cent of existing vessels and tankers under construction and scheduled for service by 1980 will be able to pass through the Canal fully laden.

79. Furthermore, in view of this programme to increase shipping through the Canal, and taking as a reference the 200 million tonnes which passed through the Canal annually before 1967, 60/ the following predictions may be made.

By the end of the first stage of the plan (1980) which will permit the passage of tankers of 150,000 tonnes deadweight, total annual oil traffic through the Canal will increase to 400 million tonnes.

By the end of the second stage (1983-1984), with the increase in the Canal's capacity, annual oil traffic will reach 800 million tonnes.

These estimates are based on the annual volume of traffic recorded before 1967 and projections as from 1980.

80. In a recent document on sea areas with the highest risk of accident 61/ prepared by the Oil Companies International Marine Forum (OCIMF), the Suez Canal is mentioned among the shipping routes most frequented by tankers. The same, very up-to-date document refers to the international straits most frequently used by shipping of all kinds, such as the Strait of Gibraltar, as sea areas that are potentially subject to risks of collision.

81. The reopening and widening of the Canal can only add to the congestion in the Strait of Gibraltar and, as a result of technological developments, will pose greatly increased threats to the coastal States.

60/ Mr. Ahmed Machhour, President of the Suez Canal Organization, said in a recent statement: "Some 21,000 vessels representing a tonnage of 200 million tonnes pass through the Suez Canal every year". Mr. Machhour, quoted by the Middle East news agency (MEN) in a dispatch from Ismailya, added that these vessels "earn Egypt some \$500 million" every year.

Mr. Machhour also stated that the number of vessels passing through the Canal "will increase to 22,000 this year". He announced that "by mid-1980, with the completion of the first phase of deepening the waterway, the Canal will be able to take 150,000 tonne vessels".

MEN also reports that "61 vessels belonging to 26 countries recently passed through the Canal, bringing to 81,183 the number of vessels which have passed through the waterway since it was reopened on 5 June 1975". The agency adds that these ships "represent a tonnage of 875.5 million tonnes". See the Moroccan daily newspaper Le Matin of 10 November 1979.

61/ See document entitled "Higher risk sea areas", a risk analysis prepared by OCIMF, August 1979.

Section II: International straits: Gibraltar, the Bosphorus and the Dardanelles

82. The Strait of Gibraltar, and the Bosphorus and the Dardanelles, which are situated at opposite ends of the Mediterranean, are important access routes to this sea. The revised Informal Composite Negotiating Text (ICNT) which has been drawn up by the Third United Nations Conference on the Law of the Sea devotes a number of provisions to the legal régime governing passage through such waterways, 62/ and to the powers of coastal States with regard to the prevention of marine pollution.
83. Consideration of these questions is therefore entirely justified and is extremely important in this analysis of the operation and conception of compensation machinery to deal with possible accidents in the Mediterranean resulting from the large volume of traffic at the entrance to or exit from these straits.
84. During discussions of the question of straits at the various sessions of the Third United Nations Conference on the Law of the Sea, the attention of the major Powers and the economic and technical concerns of the coastal States focused on an essential category of straits, namely those which international shipping has to use in the absence of an alternative route, i.e. the Straits of Gibraltar 63/ and Malacca.
85. These straits, which are used by all kinds of international traffic, are particularly vulnerable sea areas 64/ because of their geographical characteristics and the very heavy shipping traffic using them. The residents of coastal States must therefore be vigilant and users must constantly exercise due care.
86. The need for due care has given rise to the adoption by the major Powers of objective criteria governing transit passage in the revised ICNT. The industrialized countries' oil supplies are largely carried by sea and depend to a considerable extent on the free passage of vessels through these straits. A number of third world countries, such as Algeria, which is dependent on the Strait of Gibraltar, hold a similar position for basically economic reasons.
87. Although the States bordering straits are aware of the need to ensure the continuous flow of international sea-borne trade through their territorial waters which coincide with the strait, they are apprehensive about the carriage of pollutants such as hydrocarbons because of the damage which could be caused to their environment, and to the entire region surrounding the strait. They therefore advocate the establishment of appropriate technical regulations for transit passage in order to ensure international navigational safety and the security of the coastal States, particularly with regard to the prevention of pollution.

62/ It is common knowledge that, besides the special conventional regulations governing certain straits such as the Bosphorus and the Dardanelles, there is a general régime set out in article 16 of the Geneva Convention and in the provisions of the revised ICNT (part III: Straits used for international navigation, in particular arts. 37, 38, 39, 42, 45, etc.).

63/ Some 30,000 vessels a year, excluding pleasure craft and warships, pass through the Strait of Gibraltar. See Lloyd's Information Service, London.

64/ The Strait of Gibraltar varies in width between 14 and 15 km between a line joining Cape Spartel and Cape Trafalgar to the west and Europa Point and Ceuta to the east.

88. To this end, the revised ICNT 65/ grants States bordering straits the power to prevent pollution by giving effect to applicable international regulations regarding the discharge of oil and other noxious substances in the strait.

89. For some States, free transit and the protection of the interests of coastal States are not incompatible. States such as Canada and the United States of America consider that vessels in transit must conform to the international rules, procedures and practices concerning the prevention and limitation of pollution caused by ships, and that the coastal States may take action against ships which do not respect these provisions. 66/

90. In practice, there is increasingly close co-operation between the States bordering straits and the principal users of straits. Thus, Indonesia, Malaysia and Singapore have agreed to recommend a number of measures to regulate the passage of vessels through the Strait of Malacca. 67/ Negotiations have also taken place between the United States and Malaysia, and between Japan, Malaysia and Indonesia, with a view to guaranteeing protection of the marine environment against the dangers of pollution resulting from the passage of shipping through this strait.

91. The Bosphorus and the Dardanelles are subject to a special internationally agreed regulatory system deriving from the Montreux Convention of 1936. The existing system governing the Turkish straits is based on the principle of freedom of passage for merchant vessels and a limited right of passage for warships in time of peace.

92. The Black Sea coastal States benefit from preferential treatment. Although these straits, unlike other straits, are governed by very detailed international regulations, they are not immune from oil-tanker accidents and, following a collision between a Romanian tanker and Greek freighter 68/ only a few hundred metres from the Haydarpasa roads at the mouth of the Bosphorus, the Turkish authorities are envisaging strict regulation of shipping in the Bosphorus. After this disaster, the Turkish authorities may well decide unilaterally to make obligatory the presence of a Turkish pilot on board all foreign vessels using the Bosphorus and the services of a tug for oil-tankers.

93. Furthermore, according to the most experienced experts consulted for the study of navigation in the Mediterranean, small ships of which there appear to be many in this sea, constitute the greatest hazard (in Japan, for example, accidents are very frequently caused by small ships).

94. The study of the physiology of the Mediterranean calls for a brief study of the major rivers which flow into it.

65/ See revised ICNT, article 42.

66/ See L'océan partagé, page 129, by R.J. Dupuy, Editions A. Pedone.

67/ In view of the undeniable similarities between Malacca and Gibraltar, a practical study will subsequently be carried out on the spot as a supplement to this study.

68/ Le Monde, 16 November 1979.

Section III: Rivers and pipelines

95. The study of the rivers which flow into the Mediterranean is fundamentally connected with the tricky and controversial question of land-based pollution. We therefore felt that it might be useful to supplement the study of this question in visual terms by including in annex II a map showing the main rivers which flow into the Mediterranean.

96. The problem of compensation for damage resulting from land-based pollution in the Mediterranean will be dealt with subsequently.

97. In the Mediterranean region, the sea-bed is covered with a dense network of cables and pipelines. The question consequently arises whether compensation should be envisaged for pollution damage caused by this underground network, which supplies oil to the main Mediterranean terminals. In some cases pipelines, which are considered as accessories of a terminal or off-shore oil-rig, are subject to the same compensation régime. 69/

98. At this initial stage of our study, we have drawn an over-all picture of the access routes to the Mediterranean with a view to identifying as closely as possible the problems posed by compensation for pollution damage in the specific context of the Mediterranean. In this connection, and in addition to these data which are specific to the Mediterranean, there are a number of generally applicable international legal instruments concerning compensation for pollution damage. In our initial study, we drew up a list of such agreements between States or international legal entities relating to the compensation of pollution victims.

99. Because of the numerous developments which have occurred since the initial version of this study was prepared we shall examine the changes which have taken place in the existing machinery for compensation for pollution damage, particularly by hydrocarbons.

CHAPTER II: CHANGES IN THE EXISTING MACHINERY FOR COMPENSATION FOR OIL POLLUTION DAMAGE

100. Several recent accidents have shown that the victims of oil pollution have had recourse as appropriate to the compensation machinery established under the 1969 Convention on Civil Liability for Oil Pollution Damage or the voluntary TOVALOP or CRISTAL compensation plans devised and managed by shipowners and oil companies respectively.

101. The Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage was drafted in 1971 but did not enter into force until October 1978.

102. These four legal instruments (the 1969 and 1971 Conventions and the TOVALOP and CRISTAL agreements) came into being at a time when tankers were smaller and money depreciated far less rapidly than today; they are unable to cope financially with the size and cost of certain accidents. 70/

69/ See OECD document ENV/TEP/79.11 of 25 October 1979, page 34, "Pollution des mers par les hydrocarbures; limites de l'indemnisation", by Martine Rémond Guouilloud.

70/ See OECD document No. 4(16) of 25 September 1979 containing a partial register of the cost of cleaning oil slicks.

103. After almost a decade, the maximum amounts of compensation payable under the 1971 Convention and the private agreements (TOVALOP and CRISTAL) were increased in 1978 and 1979. The idea of revising the upper limit on the shipowner's liability, for which provision is made in the 1969 Convention, is currently gaining ground.

104. However, even if the compensation ceiling of the 1971 Fund was doubled, it would not be sufficient to cover the damage caused by the Amoco Cadiz disaster. Or as the French delegation stated at the first session of the Assembly of the Fund 71/ even the doubling of the ceiling would already seem to be far from sufficient for proper and equitable compensation for catastrophic pollution similar to that which followed the grounding of the Amoco Cadiz: What would have happened if a larger-capacity oil-tanker had sunk in the Mediterranean?

105. Collectivization of the risk in such a situation in the form of intervention by the coastal States themselves to bear an additional share in the process of indemnification appears to be a helpful solution. An awareness of this problem has already prompted certain countries, such as the United States of America to establish large-scale national compensation machinery to deal with pollution disasters. Similarly, OECD has prepared a number of interesting studies of these questions within its transfrontier pollution group. 72/

106. It is on these main themes that we intend to focus our analyses.

Section I: The four existing legal instruments relating to compensation for oil pollution damage

107. The four existing sources of compensation for oil pollution damage are:

The TOVALOP protocol of agreement and the 1969 Convention; and

The CRISTAL plan and the 1971 Convention.

108. The first two legal instruments provide for compensation, payable by the shipowners, of not more than the current ceiling of \$16.8 million. They represent a limit on the shipowners' liability. The other two instruments establish a system of compensation which supplements the first two and is financed by contributions from the oil industry in proportion to oil imports.

These texts have been amended since the first version of the study was issued in document UNEP/14/INF.18. We shall examine these recent amendments in an analysis of the parallels between the 1969 Convention and the TOVALOP agreement, on the one hand, and the 1971 Convention and the CRISTAL agreement, on the other. Although there are in existence four texts relevant to compensation for oil pollution damage, they do not follow one upon the other, but are complementary and operate in pairs in dealing with the various cases of compensation of oil pollution victims.

71/ See IMCO document OPCF/A.I/14/1 of 13 November 1978 (first session, first Assembly of the 1971 Fund).

72/ See the list of studies carried out by OECD (Environment Directorate) referred to in the bibliography appended to this study.

A. The parallel between TOVALOP and the 1969 Convention

109. It should be clearly understood that the compensation provided for under the TOVALOP plan covers the same field (hydrocarbons) and the same liability (shipowners' liability), and comprises the same liability ceiling (\$16.8 million) as the 1969 Convention. However, the fact that the two agreements exist can be accounted for by the practical operation of compensation. We shall therefore consider in turn:

The TOVALOP agreement and the June 1978 amendment; and

The 1969 Convention and its compensation ceiling, which has been called in question;

Whether TOVALOP and the 1969 Convention are complementary or whether they overlap;

The marine insurance market: a step forward.

(1). The TOVALOP plan 73/

110. TOVALOP is a gentleman's agreement between 99 per cent of shipowners throughout the world which came into effect on 6 October 1969 before the 1969 Convention. Under this agreement, shipowners subscribe to a liability insurance scheme under a mutual system comprising the "protection and indemnity clubs" (P and I). These P and I clubs constitute a genuinely voluntary charter. The funds of these shipowners' mutual associations are made up in part of the contributions paid by members on the basis of a provisional assessment at the beginning of the financial year. In view of the mutual status of these P and I clubs, the amount of the insurance premiums depends largely on the finances of the club.

111. The shipowner's liability was initially limited to \$100 per gross register tonne and the ceiling was fixed at \$10 million, in line with the financial capacities of the insurance market at the time. Since its establishment, TOVALOP has been invoked to provide compensation in a number of oil pollution incidents, an incomplete list of which is given in annex III.

112. The shipowners participating in the TOVALOP plan decided, on 1 June 1978, to bring their limit liability into line with that of the 1969 Convention, 74/ i.e. \$16.8 million. In accordance with the amendment to the protocol of agreement establishing TOVALOP, which took the form of a resolution, 75/ the parties to the agreement, bearing in mind the fact that there are still regions of the world which are not covered by the scope of the provisions of the 1969 Convention because they have not yet been ratified by States in those regions, and until the Convention has achieved universality, have decided on this alignment, which will provide a means of contributing to compensation for any oil pollution damage that may occur in those regions.

73/ "Tanker Owners' Voluntary Agreement concerning Liability for Oil Pollution". The Soviet fleet acceded to this mutual insurance system in 1972.

74/ The up-to-date figures for the TOVALOP plan as of 1 June 1978 are \$160 (instead of \$100) per tonne with a limit of \$16.8 million (instead of \$10 million).

75/ See the text of TOVALOP as reprinted in June 1978, Plantation House, Fenchurch Street, London.

(2). The 1969 Convention: steps towards revision of the limit on the shipowner's liability

113. The 1969 Convention established the principle of a limit of \$16.8 million on the shipowner's liability (art. V of the Convention); it is applicable in the event of a disaster through the establishment of a fund with the court of the place in which the incident occurred. The fund is proportionate to the tonnage of the largest tanker which existed at the time when the Convention was drafted, i.e. a VLCC (very large crude carrier), which can hold 250,000 tonnes of oil.

114. The limit set in the Convention has been exceeded because 500,000-tonne vessels are now being built. 76/ This has given rise to the idea of revising the limit in the light of the experience gained since the Convention came into force on 1 June 1975. The Convention states that if the incident occurred as a result of the actual fault or privity of the owner of the vessel, he shall not be entitled to avail himself of the limitation on liability. Consequently, the shipowner may be denied the benefit of the \$16.8 million limit. As indicated by the Amoco Cadiz case, the legal armour of the companies is sometimes pierced, and efforts are made to establish the liability of the group on which the shipowner company depends. 77/ The French Government has filed suit not only against Amoco Cadiz Transport, the shipowner, but also against Standard Oil of Indiana, the parent company of the group.

115. The 1969 system is in fact the result of a delicate compromise between the limitation on the liability of the shipowner and on the liability of the cargo-owner. The controversy on this subject was revived as soon as the French Government, following the Amoco Cadiz disaster, demanded, at the two sessions of the General Assembly of the 1971 Fund in November 1978 and April 1979, that the amount of compensation provided for in the 1971 Convention establishing the fund should be doubled.

76/ Some of the French experts who were consulted think, however, that the vessel of the future will be the 125,000-tonne tanker. The cost of fuel, the increasing scarcity of oil and the high daily cost of immobilization of a 500,000-tonne tanker will soon become unacceptable to the oil companies.

If this proves to be the case, traffic in the Mediterranean will increase considerably because, according to the same experts, it is medium-tonnage vessels that use the Mediterranean, quite frequently carrying dangerous substances, pollution by which is not yet regulated by a convention.

77/ OECD document ENV/TEP/79.11, Environment Directorate, Paris, 25 October 1979.

116. The reaction of certain countries such as the United States of America and Japan is clearly indicative of the increasing support for the revision of the 1969 Convention. 78/

This trend towards revision of the 1969 Convention prevailed, because at its second session (April 1979) the Assembly of the Fund adopted a resolution inviting IMCO to consider the desirability of revising the 1969 Convention in view of the decision to raise the 1971 Fund's compensation ceiling to \$54 million. 79/

These developments have a direct impact on the situation in the Mediterranean, since a number of Mediterranean coastal States are parties to the 1969 Convention.

117. At present the two agreements (TOVALOP and the 1969 Convention) are juxtaposed and first glance might seem to duplicate each other because they cover much the same ground. In practice, the way in which compensation operates makes it quite clear that there is no duplication.

(3). Are TOVALOP and the 1969 Convention complementary or do they overlap?

118. The following preliminary observations should be made.

- Since the 1969 Convention did not enter into force until 1975, six years passed during which the only compensation received by the victims of oil pollution damage was through TOVALOP.

78/ At the first session of the Assembly of the 1971 Fund (November 1978) the representative of the United States expressed concern about the growing disparitiy between the liability of the shipowner and that of the cargo-owner.

The representative of Japan favoured the revision of the 1969 Convention because, in his view, an increase in the Fund's compensation ceiling was dependent on a similar change in the 1969 Convention, the purpose being to achieve an equitable distribution of liability between the cargo-owner and the shipowner.

At the thirty-fifth session of the Legal Committee of IMCO, the French delegation made similar considered comments on this question: "One might also reconsider the limit established under the 1969 Convention for shipowner liability, since an increase in the amounts made available by the Fund would reduce the burden on the shipowner. The shipowner could then envisage increasing the amounts for which provision was made under the limit of his liability."

See IMCO documents, first Assembly of the Fund, first meeting, November 1978 OPCF/A.I/SR.7 and 8.

79/ Under this resolution, IMCO is called upon to consider, inter alia, the justification for the limits set in the 1969 and 1971 Conventions. See IMCO document, second session of the Assembly of the 1971 Fund (April 1979), FUND/A.2/17.

- The TOVALOP plan, by virtue of the text which established it, 80/ is intended to be a transitional measure, operating until such time as the 1969 Convention becomes universal in character.

- At present the Convention has been signed by only 40 States and therefore TOVALOP remains fully in force in cases where damage is attributable to vessels registered in States which are not parties to the 1969 Convention. The spheres of application of the two instruments overlap and are interrelated, thereby increasing the possibilities of compensation for victims.

119. It is interesting to note the following TOVALOP provisions which are not embodied in the 1969 Convention.

- Unlike the 1969 Convention, TOVALOP provides for compensation for imminent and serious threats of pollution, even if there is in fact no oil spillage.

- Unlike the 1969 Convention, TOVALOP provides for compensation in the event of pollution caused by vessels in ballast and covers the bare-boat charterer in the same way as the shipowner.

- Unlike in the 1969 Convention, IN TOVALOP a fault on the part of the shipowner can never cause the liability limitation to be set aside.

120. These comments and analyses of the nature of the two texts lead to the conclusion that TOVALOP plays a supplementary role in relation to the 1969 Convention.

TOVALOP is, as stated above, financially managed by the P and I insurance clubs. What is the current situation in the marine insurance market?

(4). The marine insurance market: a step forward

121. Aware of the scope and growing danger of pollution, and concerned about the development of civil liability law in the area of environmental damage, insurers are showing extreme caution in covering pollution damage. It is not surprising to find that, in the United Kingdom, there is an unwritten tradition that United Kingdom insurers on the fixed-premium market do not guarantee the civil liability of shipowners; they in fact restrict their activities in this area to reinsurance operations. Thus under the TOVALOP agreement the shipowners have set up their own insurance in the form of the P and I clubs.

122. In view of the inadequacy of the liability limit (\$16.8 million) established by TOVALOP and the 1969 Convention, and made apparent by the attempts to set aside this limit by proving actual fault on the part of the owner, the marine insurance market announced in February 1979 that in the latter case it could increase coverage to \$100 million. In other words, the P and I clubs, i.e. the liability insurance markets and their reinsurers, can provide coverage of up \$100 million if, under the machinery established by the 1969 Convention, the limit of \$16.8 million is exceeded.

80/ See page 4 of the TOVALOP text: TOVALOP will remain in force at least until June 1981, but may be rescinded after that date.

123. The P and I insurers took this decision at their February 1979 meeting with shipowners participating in TOVALOP, thus showing the positive evolution of the insurance market in this area and the advantage of a mutual system to cover pollution risks.

The other parallel in the legal structure of compensation for oil pollution damage is that constituted by the 1971 Convention and the CRISTAL plan.

B. The parallel between CRISTAL and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage

124. The 1971 Convention and the CRISTAL plan supplement the 1969 Convention and the TOVALOP plan respectively with regard to compensation for oil pollution damage. Similarly, there is a striking parallel between the two former sources of compensation, which take over from the two latter.

(1). The 1971 Convention

125. Until this Convention came into force, the maximum amount of compensation payable by the Fund in the event of an accident did not exceed \$30 million.

(a) The entry into force of the 1971 Fund

126. The 1971 Convention establishing the compensation fund, which was signed on 18 December 1971, did not enter into force until 16 October 1978 after instruments of ratification had been deposited by eight States.

With the accession of the eighth State, France, the second contributor, the Convention entered into force. The Italian Government deposited an instrument of accession to the Fund on 27 February 1979, and the Convention entered into force for Italy on 28 May 1979. Seven Mediterranean States are now parties to the 1971 Convention (Tunisia, Algeria, Yugoslavia, France, Syria, Monaco and Italy) out of a total of 19 States (see annexes IV and V).

127. After the Amoco Cadiz ran aground, France proposed in IMCO that the 1971 Fund's compensation ceiling should be raised.

(b) Raising the 1971 Fund's compensation ceiling

128. This increase was accepted at the cost of a fairly protracted dispute between two schools of thought which continued through two sessions of the Fund's Assembly (November 1978 and April 1979).

(i) The initial controversy: the maximalist position of France.

129. It is an indisputable fact that over the nine years which have elapsed since 1971, monetary values have declined while the fear of accidents involving pollution has increased. Under the terms of article 4, paragraph 6, of the 1971 Convention, the Assembly of the Fund may decide to raise the ceiling of 450 million Poincaré francs 81/ (the aggregate amount of compensation payable by the Fund in respect of any one incident) to a ceiling of 900 million Poincaré francs. 82/

81/ Equivalent to \$36 million.

82/ Equivalent to \$72 million.

130. As early as the first session of the Assembly (November 1978) France proposed that the aggregate amount of compensation payable by the Fund in respect of any one incident should be doubled. 83/

At the first session of the Assembly the French proposal was supported by the United States and the United Kingdom. Japan strenuously opposed the increase on the grounds that, in the case of Japan, it would have the effect of throwing the whole burden of compensation on the cargo-owners, which were small Japanese oil companies struggling to survive. 84/

Most States expressed a preference for deferring the decision until the Assembly's second session in April 1979. Finally, a vote was taken at the first session and resulted in the rejection 85/ of the French proposal (8 votes to 2).

(ii) The final decision: compromise between the two schools of thought.

131. From the standpoint of the present study it is instructive to examine closely the arguments in favour of raising the compensation ceiling in the event of damage caused by oil spillage. 86/ During the second session of the Fund in April 1979, a second vote was taken by roll-call on the proposal to increase to \$72 million the aggregate amount of compensation payable by the Fund in respect of any one incident. Ten States voted in favour of the increase, 87/ two voted against and there were three abstentions. Having failed to obtain the requisite three-quarters majority, the proposal was rejected. The Assembly finally decided by 13 votes to 1 (Indonesia) to raise the ceiling to 675 million francs (\$54 million). This decision was taken on 20 April 1979.

(iii) Operation of the 1971 Fund 88/

132. During 1979, the Fund examined claims for compensation as a result of accidents off the coast of Japan and in the Baltic Sea. The first was a collision in March 1979 which caused considerable damage to Japanese fishermen. Cleaning-up costs and the cost of compensating fishermen amounted to £400,000 (pounds sterling). In the second case, the crude oil spilt from a Soviet tanker (the Antonio Gramsci), which ran aground off Ventspils in February 1979, was carried across the Baltic Sea by the currents and was trapped under the ice. After the thaw, the oil spread and polluted some 2,000 islands in the Swedish archipelago. It is estimated that cleaning-up operations will give rise to claims on the Fund amounting to 38 million. The operation of the Fund has necessarily been rather limited in comparison with voluntary CRISTAL plan, which has been functioning for seven years.

83/ I.e. increased to \$72 million, which is the maximum laid down in the 1971 Convention.

84/ See IMCO document OPCF/AI/SR.7, page 13 (French text), first session of the Assembly, November 1978.

85/ See IMCO document OPCF/AI/SR.9, page 3 (French text), Assembly, November 1978.

86/ See the documents for the first and second sessions of the Assembly of the Fund.

87/ Bahamas, Denmark, France, Federal Republic of Germany, Ghana, Norway, Sweden, Syria, Tunisia, United Kingdom.

88/ IMCO document: press release issued on the occasion of the first anniversary of the entry into force of the Fund, dated 16 October 1979.

(2). The CRISTAL plan; 89/ amendment of 1 June 1978

133. Modelling themselves on the shipowners who set up the TOVALOP plan, the oil industry established an interim plan known as the CRISTAL plan. This system of post-incident compensation takes over from the liability assumed by the shipowner. CRISTAL is financed by funds contributed by the oil industry, the annual contribution of each participant being proportionate to the amount of oil carried by him throughout the world during the preceding year. The funds are administered by an international forum.

134. Since 1 January 1978, CRISTAL has raised its compensation ceiling for any one incident from \$30 million to \$36 million. On that date, and in order to meet obligations arising from the partial amendment of CRISTAL, the oil companies decided to align the compensation ceiling with that of the 1971 Fund, which at that time had not yet entered into force. This ceiling, like that of the 1971 Convention, can be raised to \$72 million, by agreement among the parties.

135. Because the 1971 Convention has been in force since October 1978, there might be a temptation to think that CRISTAL no longer serves any purpose. The maintenance of CRISTAL might duplicate the 1971 Fund, since the objectives are the same, intervention in the compensation process is virtually the same and, above all, the contributors (the oil companies) are the same.

(3). The coexistence of the CRISTAL plan and the 1971 Fund: are they complementary or do they overlap?

(a) A few preliminary observations should be made.

136. The 1971 Convention establishing the Fund became applicable only in October 1978, whereas the CRISTAL plan entered into force on 1 April 1971. During this seven-year interval, CRISTAL filled the gap caused by the non-applicability of the 1971 Convention by providing compensation to victims of accidents, as shown in the table in annex VI.

137. The CRISTAL plan is by definition an interim plan. The text establishing it 90/ states (in the preamble) that CRISTAL will remain in force until 1 June 1981. The agreement can be brought to an end either on that date or subsequent to the entry into force of the 1971 Convention, but only when the Convention has been ratified by a majority of States.

(b) In practice, CRISTAL plays a complementary role in relation to the 1971 Fund, as is apparent from the following facts.

138. At present, the 1971 Convention establishing the Fund has been signed by only 19 States, which is a fairly small number. The maintenance of CRISTAL is fully justified so long as the 1971 Convention has not achieved the status of universality

89/ Contract Regarding an Interim Supplement to Tanker Oil Pollution (CRISTAL), signed on 14 January 1971.

90/ See the text of CRISTAL published by the Oil Companies' Institute for Marine Pollution Compensation Ltd., P.O. Box 2013, Gibbons Building, Queens and Reid Streets, Hamilton 5, Bermuda (edition dated 1 July 1978).

with regard to its sphere of application. This can be explained by the fact that oil cargoes passing through the sea areas adjacent to the coasts of States that are not parties to the 1971 Convention cannot benefit from the compensation machinery established under the Convention if a disaster occurs. However, they can benefit under the CRISTAL plan. Thus, quite recently in July 1979, the incidents arising from a collision between two ships, the Aegean Captain and the Atlantic Empress, in the Caribbean near Trinidad and Tobago were not covered by the 1971 Fund since the States which were the victims were not parties to the 1971 Convention. ^{91/} Consequently, the oil importers will not have to pay twice. Furthermore, the 1971 Fund's present ceiling for compensation (\$54 million for any one incident) is higher than that of the CRISTAL plan (\$36 million). The difference of \$18 million will therefore be borne solely by the 1971 Fund if CRISTAL is also applicable in the case of a single incident.

139. Since CRISTAL and the 1971 Convention have identical roles, one might be tempted to believe that the cargo-owners contribute twice to the financing of the two systems. However, in the practical operation of the compensation machinery, a number of corrective factors come into play: CRISTAL functions in a more flexible manner and is more responsive to particular circumstances. Contributions are paid in accordance with a "statistical" yardstick, in other words, the number of incidents which CRISTAL has had to cover. This sliding-scale of contributions constitutes a code of conduct for CRISTAL. By contrast, the 1971 Fund, which operates on an administrative basis and has many overheads, requires contributions whether or not an incident occurs.

140. In any event, the contributions paid by the oil industry to support the two systems of indemnification are of the same kind but may not necessarily have the same sphere of application. At this specific level, it cannot be said that there is complete duplication between CRISTAL and the 1971 Fund.

It should also be stressed that CRISTAL, unlike the 1971 Convention, does not cover pollution resulting from unusual, inevitable and irresistible natural phenomena, the intentional act of a third party (terrorist activities) or negligence on the part of the State responsible for maintaining the relevant navigational aids.

141. If we try to present in visual terms the current possibilities of compensation for oil pollution damage, we can arrange them in four successive tiers:

^{91/} See the press release issued on the occasion of the first anniversary of the international oil pollution compensation fund, p. 2.

Fourth tier	Over \$100 million and Collectivization International community (catastrophic damage)
Third tier	Over \$54 million Capacity of the international marine insurance market is \$100 million
Second tier	Over \$16.8 million (CRISTAL \$36 million 1971 Fund \$54 million)
First tier	Liability of the shipowner Under \$16.8 million 1969 Convention - TOVALOP.

The four legal mechanisms presented above nevertheless have some shortcomings.

Section II: The limits of the present system of compensation for oil pollution damage

142. (a) The most obvious shortcoming is the limited sphere of application of the present system, which covers only damage resulting from pollution by persistent hydrocarbons. ^{92/} Thus any damage that might be caused by heavy oil carried as cargo and damage caused by oil from the fuel tanks of a large tanker sailing in ballast are excluded. ^{93/} Not only giant tankers pass through the Mediterranean but also ships carrying hazardous substances, such as chemical products (lead, tetraethyl, ammonium nitrate, etc.).

^{92/} I.e. oil which on spreading does not evaporate or dissolve in the water. For the definition of persistent oil see Mr. Simon's study. "Civil redress for oil pollution damage at sea" 1976, page 22.

^{93/} The Olympic braverly accident showed that the 1200 tonnes carried in its tanks for propulsion and electricity generation purposes not as cargo, when discharged into the sea, were not covered by the 1969 and 1971 Conventions, in spite of the considerable damage they caused. For a more thorough analysis of the shortcomings of the treaty system of compensation for damage as established by the 1969 and 1971 Conventions, see the report prepared by the French parliamentary commission of inquiry set up as a result of the grounding of the Amoco Cadiz, Vol. 1, No. 665, in particular pages 319-322.

(b) It is true that the IMCO Legal Committee has been studying for two years a draft convention on liability and compensation in connection with the carriage of noxious substances by sea. The issue still outstanding is the advisability or otherwise of setting up a specific compensation fund independent of the 1971 Fund. Similarly, the problem of sharing the burden of liability between the carrier and the shipper continued to give rise to significant differences of opinion between the various delegations attending the thirty-eighth session of the Legal Committee. 94/

(c) The present compensation ceiling (\$54 million) is too low to begin to provide equitable compensation for the victims of an accident on the scale of the Amoco Cadiz disaster. Conscious of the inadequacy of the amounts of compensation provided for under the Brussels Conventions of 1969 and 1971, some States, while not acceding to those Conventions, have opted for the incorporation and application in their municipal legal system of a comprehensive system of liability and compensation for marine pollution damage. This is the case with the most recent United States legislation of January 1979, 95/ when the House of Representatives began consideration of two texts which make up this legislation. The new United States Act proposes to set up a compensation fund of \$200 million, administered by the Secretary of the Treasury and financed by a tax of three cents a barrel on oil imported into United States refineries. The experience gained as a result of the pollution caused by the grounding of the Amoco Cadiz demonstrates in spectacular fashion the inadequacy of the amounts fixed by the 1971 Convention. It is significant that in this case the expenditure incurred by the French Government in combating the pollution amounted to 415 million francs, to which must be added 45 million francs in compensation to the victims, making a total of 460 million francs or about \$100 million. 96/ The ceiling of \$54 million thus appears too low to provide proper and equitable compensation for catastrophic pollution such as that caused by the grounding of the Amoco Cadiz.

- What would have happened if it had been a larger tanker? Moreover, what would have happened if the accident had occurred in the Mediterranean Sea?

These questions lead us to consider possible solutions in the Mediterranean to deal with marine pollution caused not only by oil but also by other sources of pollution.

94/ See the report of Legal Committee on the work of its thirty-eighth session (IMCO document LEG/XXXVIII/5 of 6 March 1979).

95/ Comprehensive Oil Pollution Liability and Compensation Act.

96/ The 1971 Convention establishes \$72 million as the maximum amount of compensation.

CHAPTER III: LINES OF STUDY: POSSIBLE FORMULAS FOR A MEDITERRANEAN COMPENSATION FUND

143. At the present stage of our study, one can only indicate a few areas of research for possible solutions for the specific case of the Mediterranean to supplement the present international system of compensation for damage caused by oil pollution and other sources of pollution. The revised ICNT, which will constitute the general framework and the comprehensive legal structure covering all aspects of the law of the sea, opens the door to new initiatives with regard to compensation for pollution damage to the marine environment. Article 235 of ICNT ^{97/} provides for the establishment of a compensation fund with the objective of ensuring "prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, State shall co-operate ... in the further development of international law relating to ... compensation for damage ... as well as development of criteria and procedures for payment of adequate compensation such as compulsory insurance or compensation funds".

144. Consequently, it would be incorrect to think that the 1971 Fund constitutes a universal panacea or that any new initiative to set up supplementary compensation funds will inevitably be impeded or opposed by States. The disasters which have already occurred have been sufficiently alarming to alert States to the problem and to inculcate responsible and clear-headed attitudes. Furthermore, in this connection it is interesting to note that the Secretary General of IMCO, in his opening statement at the first session of the Assembly of the 1971 Fund in November 1978, ^{98/} said that the Fund constituted the first significant international effort to provide adequate financial resources... in order to combat the increasing dangers of pollution caused by the carriage of oil. He expressed the hope that it would pave the way for other international measures to combat threats whose nature and likelihood were such that they could be effectively countered only through joint initiatives.

145. Joint initiatives should in fact be taken in the Mediterranean to counter effectively the disastrous consequences of accidents arising from various sources of pollution. A diplomatic conference of the Mediterranean coastal States held under UNEP auspices could make a choice between various options. The plenipotentiaries would be able to assess the advantages, disadvantages, economic viability and feasibility of each approach.

146. What options could be submitted for consideration by a diplomatic conference of this nature? The options listed below may be taken as constituting the outlines of a solution for the compensation of the victims of damage arising from the various sources of pollution.

^{97/} See ICNT section 9 "Responsibility and liability", article 235 (A/CONF.62/INF.10/Rev.1, p. 117).

^{98/} See IMCO document OPCR/A.1/SR.1 page 2 first session of the Assembly of the 1971 Fund, November 1978.

First option: oil: make membership of the 1971 Fund universal among Mediterranean States?

Second option: off-shore drilling: extend the OPOL agreement to cover the Mediterranean?

Third option: noxious and hazardous substances: establish a specific fund?

Fourth option: for land-based pollution, preventive or corrective action?

Section I: Option No. 1

147. Should all Mediterranean States become members of the 1971 Fund or should an inter-State compensation fund be set up specifically for the Mediterranean?

In the case of compensation for oil pollution damage, there could be two alternatives.

(1) First alternative

(a) Multilateral action by the Mediterranean coastal States.

148. Such action could be initiated through the adoption of a resolution by the States parties to the Barcelona Convention to the effect that all those States should accede to the 1971 Convention on the Establishment of an International Fund. Seven Mediterranean States are already parties to this Convention. ^{99/} Before such a resolution is adopted, it would be advisable to contact the Governments of the Mediterranean States which have not yet acceded to the 1971 Convention in order to find out why they have not done so and what misgivings they have with regard to this Convention. ^{100/} Some States might be persuaded to ratify the Convention if there was a revision of the present ceiling for compensation, which was raised to \$54 million in April 1979. The discussions which took place at the two sessions of the Assembly of the 1971 Fund revealed a clear trend in favour of high ceilings for compensation capable of meeting the heavy financial consequences of disasters such as that involving the Amoco Cadiz.

149. In view of the interplay between the 1971 and 1969 Conventions, it would be equally useful if the latter was ratified by all the Mediterranean coastal States. At present, the majority of these States are parties to this Convention, ^{101/} only Albania, Egypt, Libya and Turkey not yet having acceded to it. Representations to these States might prove useful in order to ascertain the reasons for their present attitude. It is true that the liability ceilings established under the 1969 Convention have been criticized by a number of States, as indicated above, as being too low.

^{99/} Algeria, France, Italy, Monaco, Syria, Tunisia and Yugoslavia.

^{100/} During the first session of the Assembly of the Fund, the United States of America proposed that the Assembly adopt a resolution urging States parties to the two Conventions to request IMCO to convene a diplomatic conference as soon as possible in order to examine the problems which are preventing some States, including the United States of America, from ratifying the Convention. See IMCO document OPCF/A.1/SR.8, first session of the Assembly of the Fund (November 1978).

^{101/} The following States are parties to the 1969 Convention: Algeria, Cyprus, France, Greece, Israel, Italy, Monaco, Morocco, Spain, Syria, Tunisia, Yugoslavia.

150. Once this Convention has been revised, as already provided for in the IMCO work programme, other States might be encouraged to accede to it.

Meanwhile, unilateral action by each Mediterranean coastal State could very usefully be taken with regard to the users of this sea.

(b) Unilateral action

151. Each Mediterranean coastal State could adopt within its municipal legislation measures prohibiting access to its territorial waters and ports by any ship which did not have appropriate insurance cover. In other words, the shipowner would have to show that his country had ratified the 1969 Convention. 102/

152. Would such unilateral action run counter to the principle of innocent passage through the territorial waters of a State? An uninsured ship using the territorial waters of a coastal State is a potential threat to the economic security of that State. In the event of an accident, an entire region might be affected by its consequences. If a giant tanker ran aground in the Strait of Gibraltar, not only Morocco and Spain but also the neighbouring States bordering the Mediterranean would be affected. Consequently, unilateral action of this kind by a coastal State is in conformity with the very spirit of the principle of innocent passage. Its adoption would be timely since at the international level only 42 States have ratified the 1969 Convention.

153. Against multilateral action by the Mediterranean coastal States aimed at the ratification of the 1971 Convention by all those States, it might be argued that in any case, and in the absence of such action, the CRISTAL plan would come into play in the event of an accident affecting a State which was not a contributor to the 1971 fund and that only in the event of the cancellation of the CRISTAL plan would such action be justified.

154. The fact remains that the 1971 fund's ceiling for compensation is inadequate. Might one therefore envisage a complementary mechanism for the Mediterranean States which would take over from the 1971 fund in the event of catastrophic pollution resulting from oil spillage? 103/

(2) Second alternative: a Mediterranean inter-State guarantee fund

155. In addition to the compensation ceiling established under the 1971 Convention, the Mediterranean States can always set up an inter-State guarantee fund for this sensitive area of the globe. 104/ Contributions to this fund would go towards the prefinancing of compensation. The fund would pay compensation in full for large-scale damage exceeding the present compensation ceilings. A reasonable toll based on criteria to be determined could be levied on each access route to the Mediterranean.

102/ The French act of 1977 contains provisions to this effect.

103/ The experts contacted during the visits made by the authors of the study in Europe did not express any reservation with regard to action which supplemented the possibilities of compensation offered by the 1971 fund, and which did not duplicate the fund.

104/ In the initial version of the study (UNEP/IG.14/INF.18) we outlined possible operational machinery for such an inter-State fund.

156. The Suez Canal is convenient since there is already a toll which could be adjusted with the direct co-operation of the Egyptian authorities. A distinction could be made between oil cargoes originating outside the Mediterranean region and those originating within the region.

157. Oil cargoes originating outside the Mediterranean region

For every oil cargo at least one toll should be paid to the guarantee fund at the time of entry into the Mediterranean, either at the Suez Canal or at the first Mediterranean port when the ship enters via the Strait of Gibraltar or the Bosphorus.

158. Oil cargoes originating within the Mediterranean region

In the case of oil produced by one Mediterranean coastal State and delivered to other Mediterranean coastal States, the toll would be payable in the importing State (a receipt would be given). In the case of oil from a Mediterranean coastal State passing through the Mediterranean to a destination outside it, the toll would be payable in the exporting State.

159. Traffic in the Mediterranean is bound to increase alarmingly in view of the impending completion of work on the widening of the Suez Canal. The establishment of a supplementary guarantee fund to provide compensation for oil pollution damage is not unjustified.

160. Whether one or the other of the two alternatives outlined above is selected, the essential point is to ensure fair compensation for the victims of oil pollution, and indeed of other sources of pollution (hazardous substances, off-shore oil-drilling, etc. ...). It is of vital importance, particularly in the case of the Mediterranean, that there should be an automatic system for the assumption of responsibility for providing compensation for damage over and above the existing compensation ceilings (through a supplementary toll levied on cargoes passing through the Mediterranean to finance the Mediterranean inter-State guarantee fund or perhaps through the assumption of responsibility by the coastal State itself by virtue of its prerogative to grant the use of its flag). This automatic system could be a "Mediterranean solidarity fund" financed by contributions from all the coastal States. A similar procedure might be envisaged for the carriage of hazardous substances.

Section II: Option No. 2: Special compensation fund for the carriage of noxious and hazardous substances?

161. As already mentioned, the Legal Committee of IMCO has been working for two years on a convention on civil liability for the carriage of hazardous substances other than oil. This work, which is still in progress, involves some extremely complicated legal and economic points whose consideration is beyond the scope of this study. Nevertheless, we wish to mention here the compensation aspect because the carriage of hazardous substances in the Mediterranean gives rise to serious concern about the safety of that sea. In IMCO a suggestion has been made for the establishment of an international compensation fund similar to the one set up in 1971 but financed by the manufacturers of chemical products. However, what was regarded as a workable method of financing for the 1971 fund (contributions from a well-structured and clearly identified oil industry), might not prove workable in the case of chemical manufacturers. Similarly, the distribution of responsibility between the carrier and the shipper is a delicate problem because it has given rise to sharp differences of opinion between States.

The foreseeable development of off-shore operations in the Mediterranean also raises the problem of the increased risk of accidental pollution.

Section III: Option No. 3: Pollution resulting from off-shore oil operations 105/
in the Mediterranean

162. Some Mediterranean coastal States have already started to explore and to exploit their continental shelf (Libyan Arab Jamahiriya, Spain, Tunisia, Yugoslavia), and this is not without transnational danger to that region. Oil pollution originating from the continental shelf of a Mediterranean country could spread over a great distance and cause damage to neighbouring countries.

In the face of such possibilities, there is no satisfactory compensatory mechanism for the assumption of responsibility for the victims of a disaster of this kind in the Mediterranean.

163. There are in existence two legal instruments in this area:

- The 1976 Convention on civil liability for oil pollution damage resulting from off-shore activities has certain shortcomings 106/ which at present deprive it of any value for the Mediterranean.
- Following the model of the TOVALOP and CRISTAL plans, the off-shore operators have decided of their own accord to offer possible victims compensation for damage resulting from off-shore oil pollution through the OPOL plan. 107/ The total financial liability of the operator for each accident is limited to \$25 million.

164. At first the OPOL plan was applicable only in waters within United Kingdom jurisdiction. It was then extended to Denmark, the Federal Republic of Germany, France, Ireland, the Netherlands and Norway. Could it be made applicable to the Mediterranean coastal States? This is a first alternative which should be examined. Another alternative might be the establishment of an international or regional fund similar in conception to the 1971 fund.

(1) First alternative: extension of the OPOL plan to the Mediterranean

165. This alternative may encounter some difficulties, such as the fact that the present operators in the Mediterranean do not subscribe to OPOL. An extension of OPOL to this sea would mean that the oil companies operating in the North Sea but not in the Mediterranean would be bound by the guarantee obligation of the OPOL plan. In other words, those companies would guarantee operations conducted by third parties, by other companies. OPOL differs from the CRISTAL plan, membership of which requires proof that the operator has adequate financial resources, i.e. that he can pay damages of up to \$25 million in the event of pollution. The joint responsibility of the other members in cases where an operator belonging to OPOL or his own guarantor is at fault is provided for in the operative part of the legal instrument establishing OPOL. Therefore, in order to extend OPOL to cover the Mediterranean, the mutual guarantee clause would have to be revised, unless the Mediterranean coastal States were unwilling to set up a "Second OPOL" for the Mediterranean.

105/ Since the oil pollution in the Gulf of Mexico resulting from the explosion of an oil-well on 3 June 1979, the most recent disaster has been the accident in the Bay of Campeche on 26 June 1979 (see Le Monde of 26 June 1979).

106/ London Convention of 17 December 1976. See article by Mr. André Dubais in the Journal of law and commerce, 1977

107/ Off-shore Pollution Liability plan, concluded at London on 4 September 1974, to which 41 oil companies have now acceded.

(2) Second alternative: compensation fund for pollution damage resulting from off-shore operations

166. Professor J. McLoughlin, in his report 108/ submitted at the preparatory meeting in Rome on a protocol relating to the legal aspects of the pollution of the Mediterranean resulting from the exploration and exploitation of the continental shelf and of the sea-bed and its subsoil, proposed an international fund to which all States parties conducting off-shore operations would contribute in proportion to the drilling and oil production operations which they controlled in their respective sectors of the continental shelf. It would be for the State to decide whether its contribution would depend entirely or only in part on authorization rights.

He went on to say that if such a Fund could be established for damage caused by off-shore operations in the Mediterranean, it would be very closely linked to any protocol relating to the question.

In view of the proximity of oil rigs to the littoral of the coastal State, it might be wise to argue in favour of compulsory insurance contracted by the concessionary company. In this connection, compensation for off-shore pollution should be placed within the framework of the relations governing the State granting the concession and the concessionary company.

167. These alternatives might be submitted for consideration by the Mediterranean coastal States; a further alternative relates to compensation for damage caused by land-based pollution.

Section IV: Option No. 4: Compensation for damage caused by land-based pollution

168. In the area of pollution of the marine environment, some pollutants are easy to identify (such as oil) and others are hard to identify because they come from diverse sources. The latter kind of pollutants in fact result from land-based pollution. How can one think of compensation for damage if the damage is not identifiable? That is the crux of the problem. Most of the experts consulted on this point were unanimous in thinking that in this field preventive action by the coastal States would be the most realistic solution.

169. It might be desirable for the legislation of the Mediterranean coastal States to provide for compulsory insurance for certain pollution-causing industries situated along their coastlines (e.g. cement works, paper mills, chemical fertilizer plants), local authorities would exercise control over establishments or services presenting a specific pollution risk (stations for the treatment of sewage and household refuse, establishments classified as causing pollution) through the rules in force. 109/

108/ See report by Professor McLoughlin, basic document No. 4, reference number NEP/1400-7702-1352, of the joint UNEP-IJO project for the said meeting, entitled "Civil liability and guarantee funds", Rome, 11-15 December 1978.

109/ See OECD Environment Directorate, working paper No. 10 (Paris, 27 September 1979), relating to compensation for pollution-related damage and insurance.

CONCLUSION

This additional study of the question of liability and compensation for damage resulting from pollution of the Mediterranean environment has sought to report and analyse a certain amount of new data and to bring the first study up to date. It has also endeavoured to make some additional observations on the possibilities of establishing compensation machinery to supplement the existing international machinery with a view to meeting the geographical and ecological requirements peculiar to the Mediterranean.

Two essential points must be stressed.

A prerequisite for any attempt to establish compensation machinery for the various sources of pollution in the Mediterranean in order to supplement the existing machinery is undoubtedly a genuine political will on the part of the Mediterranean States to remove any possible obstacle to the implementation of such measures.

This political will should be reflected in practice by direct intervention on the part of these States in the form of acceptance of responsibility for damage beyond what is currently provided for in the "compensation market". For example, the marine insurance market apparently cannot exceed \$100 million for the carriage of oil. According to the marine insurers consulted, the burden cost of \$100 million is a truly enormous effort made by the insurance market to cover possible accidents caused by the carriage of oil.

Above this ceiling, intervention by the Mediterranean States through reinsurance might be envisaged. This would be a complementary form of insurance taken out by the Mediterranean community to cover the period after a disaster, since the following types of action could be taken:

Prior action: establishment of an inter-State fund before an accident occurs;

Subsequent action (after a disaster): this would avoid the mobilization of funds, to which certain States might object.

The pooling of the pollution risk ^{110/} above certain limits seems to be the pattern of the future. Some States have already recognized the extent of the damage that can be caused by oil pollution and have set up national machinery establishing mutual coverage of the pollution risk at the federal level. The convening of the committee of governmental experts on the Mediterranean Sea is an unmistakable sign of the vigilance of the Mediterranean community and of UNEP with respect to these interdependent and complicated questions of liability and compensation for damage caused by pollution of the Mediterranean environment.

^{110/} One example is the Texas City disaster in 1947, when there was a powerful explosion and Texas City was almost entirely destroyed. Eventually a bill was enacted by the United States Congress ordering the community, in this case the State of Texas, to assume responsibility. Thus the Texas City disaster showed, by its very extent, that neither the companies nor world-wide insurance or reinsurance could meet the very high cost of the disaster. The only reasonable alternative was for the community to meet the cost.

BIBLIOGRAPHY

Informal Composite Negotiating Text/revision 1 (A/CONF.62/WP.10/Rev.1),
28 April 1979.

Kiss, A.C. Study on off-shore mining and drilling carried out within the
limits of national jurisdiction (UNEP/WG.24/2).

United Nations Juridical Yearbook, 1976 (ST/LEG/SER.C/14).

Yearbook of the International Law Commission, 1976, vol. I and II.

" " " " " " 1977, vol. I and II.

" " " " " " 1978, vol. I and II.

Review of maritime transport, 1978. Report by the UNCTAD secretariat
(TD/B/C.4/182), 31 May 1979.

Piquemal, A. and Savini, M. Legal aspects of marine environment protection
in the gulf of guinea and adjacent coastal areas (UNEP/WG.27/INF.7).

Evaluation des ressources halieutiques de l'Atlantique Centre-Est, rapport de
la quatrième session (FID/R.220).

Shipping Information Services of Lloyd's Register of Shipping and Lloyd's of
London Press Limited, "Marine pollution and the third UNCLOS: the emerging
regime of marine pollution".

Assemblée Nationale, No. 665, Commission d'enquête créée à la suite du naufrage
de Bretagne, 16 March 1978.

Summary records of the first Assembly of the International Fund for Compensation
for Oil Pollution Damage.

Shipping in the Mediterranean

The Suez Canal and its impact on tanker trades and economics.
H.P. Drewry (Shipping Consultants) Ltd., London; May 1978, (No. 62).

Les travaux de la VIe assemblée du comité de coordination des ports de la
Méditerranée nord-occidentale ont porté sur les problèmes actuels du trafic
maritime méditerranéen. Journal de la marine marchande, 20 April 1978.

Vukas Budislav. The Mediterranean and the international law of the sea.
Revue yougoslave de droit international, p. 115.

Queguiner, J. The Mediterranean as a maritime trade route.
Ocean management, 1978:3:179.

Robert, Jean. Eléments d'une politique des transports maritimes.
Editions Eyrolles.

Revue maritime No. 301, (60, rue Richelieu) March 1975.

Vigarie, André. Eléments d'une politique des transports maritimes.
Ed. Marie Thérèse Genin.

Chapman, J.B. The development of Ro-Ro services in Marseilles; Parts I and II.
Maritime pollution management 6:2 and 3, 1979.

Dubais, B.A. Some legal aspects of the Amoco Cadiz incident. Lloyd's maritime and commercial law quarterly, August 1979.

Dubais, B.A. Prévention, sanction et réparation du dommage de pollution résultant d'opérations sur le plateau continental en droit français.
Travaux de la société française pour le droit de l'environnement (Strasbourg) May 1976.

Dubais, B.A. Les risques de dommage par pollution provenant des activités d'exploration et de production du pétrole en mer du Nord. International Bar Association Committee on Petroleum and Mineral Resources, Stockholm Conference, August 1976.

Dubais, B.A. Off-shore Pollution Liability Agreement (OPOL). May 1977.

Oil Companies International Marine Forum. Higher-risk sea areas; a risk analysis. August 1979.

Rémond Guilloud, M. Leçons d'un naufrage (Concerning the compensation of the Amoco Cadiz victims). Recueil Dalloz Sirey, 30 May 1979.

Iatron, M. (Legal adviser to the Assureurs maritimes de France). Pollution de la mer par les hydrocarbures; mécanismes de l'indemnisation. June 1979.

Bessemer Clark, L.F. The future of TOVALOP. P and I Club.

Pontavice, E. du. La protection juridique du voisinage et de l'environnement. May 1976.

UNEP and environment law

Group of Experts on Liability for Pollution and Other Environmental Damage and Compensation for Such Damage. Nairobi, 23 February - 4 March 1977. (UNEP/WG.8/1, 2 and 3; UNEP/WG.14/4).

Draft principles of conduct in the field of the environment for the guidance of States in the conservation and harmonious utilization of natural resources shared by two or more States: Report of the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States on the work of its fifth session held at Nairobi from 23 January to 7 February 1978. (UNEP/GC.6/17 and UNEP/IG.12/2).

Draft report of the Working Group of Experts on Environmental Law on its fourth session. 12 October 1979. (UNEP/WG.34/1).

Mendelsohn, A.T. and Fidell, A.R. Liability for oil pollution; United States law. Journal of maritime law and commerce 10:4:475, July 1979.

Gorman, F.J. The choice between proportionate fault or Ryan indemnity in maritime property damage cases. Journal of maritime law and commerce 10:3:325, April 1979.

Control of hazardous material spills; Proceedings of the 1972 National Conference on Control of Hazardous Material Spills. (Sponsored by the Environmental Protection Agency, University of Houston, Houston, Texas, 21-23 March 1972).

Christol, Carl Q. Oil pollution of the marine environment; a legal bibliography prepared for the use of the Committee on Public Works, U.S. Senate, Washington, January 1971. (Serial No. 92 - 1).

OECD documents

Organisation for Economic Co-operation and Development. OECD and the Environment. Paris 1979.

Martin, Gilles J. (Maître Assistant à l'UER de Droit et des Sciences économiques, University of Nice). L'indemnisation des dommages écologiques. Paris, 20 August 1979. (OECD. Environment Directorate, Working paper No. 9).

Transfrontier Pollution Group. L'Indemnisation des dommages nés de la pollution et l'assurance. Paris, 27 September 1979. (OECD. Environment Directorate, Working paper No. 10). (ENV/TFP/M/78-13).

Transfrontier Pollution Group. La réparation des dommages à l'environnement en droit belge. Paris, 13 November 1979. (OECD. Environment Directorate, Working paper No. 11).

McCaffrey, Stephen C. (Associate Professor of Law, McGeorge School of Law, University of the Pacific, Sacramento, California). Legal remedies for existing or threatened pollution damage in Canada and USA; a study prepared for the Environment Directorate, OECD, June 1979.

Transfrontier Pollution Group. Nomenclature des coûts des marées noires. (Conference room document No. 6(16)).

Transfrontier Pollution Group. Bibliography on OECD activities on oil spills in the marine environment, Paris, 4 October 1979. (OECD. Environment Directorate. Conference room document No. 7(16)).

Environment Committee. Transfrontier Pollution Group. Plans d'urgence contre les pollutions marines par les hydrocarbures; Barème D. Paris, 17 October 1977. (OECD. Environment Directorate) (ENV/TFP/77.15).

Transfrontier Pollution Group. Limites de l'indemnisation en cas de pollution des mers par les hydrocarbures; Barème D. Paris, 15 October 1979. (OECD. Environment Directorate) (ENV/TFP/79.11)

Transfrontier Pollution Group, Indemnisation disponible en cas d'accident de pétrolier. Paris, 25 October 1979. (OECD. Environment Directorate, Conference room document No. 8(16)).

OECD. Environment Directorate. Liste partielle et provisoire sur le coût du nettoyage des marées noires. Paris, 25 September 1979. Conference room document No. 4(16)).

OECD. Environment Directorate. La protection de l'environnement marin par les Etats riverains à l'extérieur de leurs mers territoriales. Paris, 5 October 1979. (ENV/TFP/79.20).

Environment Committee. Pollution transfrontière 1975-1978; Rapport sur les mesures relatives à la recommandation C(1974)224 concernant des principes relatifs à la pollution transfrontière adoptés par le Conseil à la suite de la première réunion au niveau ministériel du Comité de l'Environnement; Barème 2. Paris, 6 September 1979. (OECD. Environment Directorate) (ENV/79-12).

Some international aspects of the Ekofisk accidents (ENV/TFP/77.12).

Environmental damage funds (Thiem) (TFP/WP. No. 6).

Redress for damage due to transfrontier pollution (Dupuy and Smets) (ENV/TFP/77.14).

Compensation for damage due to pollution (ENV/ECO/77.18 (1st Rev.)).

Partage du coût des opérations de nettoyage des marées noires (ENV/TFP/79.5).

Couverture financière des frais d'assistance internationale en cas de lutte contre une marée noire (ENV/TFP/79.13).

Echange d'informations sur la lutte internationale contre les marées noires (ENV/TFP/79.15).

Analyses économiques du remboursement éventuel de l'assistance en cas de marée noire (ENV/TFP/79.18).

Compétence exercées par les Etats à l'extérieur de leur mer territoriale en vue de protéger leur environnement marin (M. Kiss). (ENV/TFP/79.20).

Résolution adoptée par l'Institut de droit international, Session d'Athènes. 12 September 1979.

Guttieres, Mario (President, IJO). Exposé relatif au nouveau régime du droit de la mer et de la protection de l'environnement marin, notamment en ce qui concerne la mer Méditerranée et les activités off-shore dans les limites des juridictions nationales. Journées internationales du droit maritime marocain (Rabat), 11-17 September 1979.

Timagenis, G.R.J. Marine pollution and the third UNCLOS; The emerging régime of marine pollution. Marine law and policy. London, Lloyd's of London Press Ltd.

Rémond Guillaud, M. La protection de la mer contre les épaves de navires. Revue juridique de l'environnement 2/1979:91.

Treves, Tullio. La pollution résultant de l'exploration et de l'exploitation des fonds marins et le droit international. Annuaire français de droit international. 1978: 827.

IMCO documents

International Compensation Fund for Oil Pollution Damage:

Renseignements généraux sur le Fonds international d'indemnisation pour les dommages dus à la pollution par les hydrocarbures.

Assembly; First session, 13-17 November 1978:
30 March 1979. Summary records of the 1st - 9th plenary meetings (OPCF/A.1/SR.1 - 9).

Assembly; First session. Liste des documents parus à l'occasion de la première session ordinaire de l'Assemblée du Fonds international d'indemnisation pour les dommages dus à la pollution par les hydrocarbures. 30 March 1979 (OPCF/A.1/INF.3).

Assembly; First session, agenda item 9. Adoption du règlement intérieur du Fonds (Observations made by the Oil Companies International Marine Forum and by the Oil Companies Institute for Marine Pollution Compensation Limited). 9 October 1978. (OPCF/A.1/3/1).

Assembly; Second session, 17-20 April 1979, agenda item 13. Calcul des contributions annuelles. 17 April 1979. (FUND/A.2/10/1).

Assembly; First session, agenda item 13. Choix de l'Etat siège (Note by the French delegation). 13 November 1978. (OPCF/A.1/AO/1).

Assembly; First session, agenda item 17. Augmentation de la responsabilité maximale du Fonds (Note by the Secretary-General of IMCO). 20 September 1978. (OPCF/A.1/14).

Assembly; First session, agenda item 17. Augmentation de la responsabilité maximale du Fonds (Proposal by the French delegation). 13 November 1978. (OPCF/A.1/14/1).

Assembly; First session, agenda item 18. Relations avec l'OMCI et les autres organisations (Note by the Secretary-General of IMCO). 20 September 1978. (OPCF/A.1/15).

Assembly; First session, agenda item 10. Calcul des contributions initiales (Note by the Secretary-General of IMCO). 5 October 1978. (OPCF/A.1/18).

Assembly; First session, agenda item 10. Calcul des contributions initiales (Note by the Secretary-General of IMCO). 7 November 1978. (OPCF/A.1/18/Add.1).

Assembly; Second session, agenda item 13. Calcul des contributions annuelles.
16 March 1979. (FUND/A.2/10).

Assembly; First session, agenda item 5. Invitation, en qualité d'observateurs, d'organisations intergouvernementales et d'organisations internationales non gouvernementales (Note by the Secretary-General of IMCO). 20 September 1978. (OPCF/A.1/7).

Assembly; First session, agenda item 6. Contrat de nomination au poste d'administrateur passé entre le Fonds international d'indemnisation pour les dommages dus à la pollution par les hydrocarbures et M. R.H. Ganten. 21 November 1978. (OPCF/A.1/4/1).

Assembly; Second session, agenda item 18. Projet d'accord de coopération entre le Fonds et l'Organisation intergouvernementale consultative de la navigation maritime. 15 March 1979. (FUND/A.2/14).

Assembly; Second session. Projet de compte rendu des décisions. 20 April 1979. (FUND/A.2/16).

ANNEX I

PERSONS AND ORGANS CONSULTED

Geneva

UNCTAD (Mr. Erik CHRISPEELS, Legal Affairs Officer, Shipping Division;
Mr. Robert RAMSAY, Chief, Shipping Section).

New York

Mr. Robert QUENTIN-BAXTER (International Law Commission Special Rapporteur
for the topic of international liability for injurious consequences arising
out of acts not prohibited by international law);
Mr. L. CAFLISCH, Professor, Institut des Hautes Etudes Internationales.

France

Paris

Mr. SURBIGUET;
OECD (Mr. H. SMETZ, Environment Directorate);
Mr. Bernard André DUBAIS, Directeur juridique, Compagnie Française des
Pétroles;
Mr. F. ODIER, Chef, Service juridique, Comité central des armateurs de France;
Mr. Pierre LATROND, Conseiller juridique, Comité central des assureurs
maritimes de France;
Professor du PONTAVICE, Université de Paris;
Mrs. Martine REMOND GOULLAUD, Professeur de droit maritime, Sorbonne;
Professor Paul Marie DUPUY;

Aix-en-Provence

Professor Pierre BONASSIES;

Nice

Professor A. PIQUEMAL.

Norway (Oslo)

Professor of Law Carl August FLEISHER, University of Oslo;
Mr. K.M. BRUZELIUS, Head of Division, Department of Legislation, Ministry
of Justice.

Sweden (Stockholm)

Jrodbrukssept, Jakobsgr 26 Fack 10320, Stockholm; Telex 11461 Loendes;
Institutet foer Vatten Och Luftvaardsforskning, Haelsingeg 43 Vox 21060,
10031 Stockholm; Telex: 11792 Ivls;
Miljoedatanaemnden, Drottningg 20, 11151 Stockholm;
Zoologiska Institutionen Vid Stockholms Universitaet, Raadmansc 6801,
11386 Stockholm.

United Kingdom (London)

Mr. BUSHA, Head, Legal Department, IMCO;
Mr. Arthur E. FISHER, Managing Director, Marine Pollution Compensation Services Limited, CRISTAL;
Mr. Derek B.A. OCKENDEN, Assistant to the Managing Director, International Tanker Owners' Federation Limited, TOVALOP;
Mr. R.H. GANTEN, Director, International Compensation Fund for Oil Pollution Damage;
Mr. SAGAR, Deputy to Mr. GANTEN;
Mr. Henry CHESTER and Mr. Richard GENTRY, Lloyd's Maritime Insurance Department;
Mr. C.A. WALDER, Executive Secretary, Oil Companies International Marine Forum, OCIMF.

Italy (Rome)

Professor Roberto AGO, Judge at the International Court of Justice, The Hague; Member of International Law Commission and ILC Special Rapporteur for the topic of State responsibility;
Miss Marina SPINEDI, Assistant to Professor AGO;
Professor Tullio TREVES, Professor of International Law, University of Turin;
FAO (Mr. CARROZ, Chief Legal Adviser; Dr. Dominique ALTHERTIERE, Environmental Law, Legal Office);
Mr. Mario GUTTIERES; President, International Juridical Organization.

Spain (Madrid)

Mr. José Antonio DE ITURRIAGA BARBERAN, Deputy Director-General of the Merchant Marine (see his latest course at The Hague Academy of International Law);
José Luis BUIGUES, Professor of International Law, Faculty of International Law, University of Madrid.

ANNEX III

LIST OF INCIDENTS THAT HAVE ENTAILLED ACTION BY TOVALOP

<u>Name of ship</u>	<u>GRT</u>	<u>Location of incident</u>	<u>Brief details of incident</u>	<u>Quantity of oil spilled and type of oil</u>	<u>Reimbursement to Government for clean-up costs</u>
THORSHOV	54 488	Off Southampton, UK	Spill during discharging operations	1 000 barrels crude	75 000
ARROW	11 379	Off Nova Scotia, Canada	Grounded and then broke in two	7 000 tons fuel	\$945 000
OCEANIC GRANDEUR	30 714	Off N.E. Australia	Ran aground fracturing number of tanks	6 000 tons crude	\$A95 047 65
IRINI	9 041	Off Stockholm, Sweden	Grounded	100 tons fuel	\$US 218 000
PACIFIC GLORY	42 777	Off Isle of Wight, UK	Collision with Allegro	5 000 tons crude	330 000
KAZIMAH	29 951	Off Robben Island, South Africa	Ran aground after engine failure	Fuel	Rands 23 000
TEXACO CARIBBEAN	13 603	Off Folkestone, UK	Collision with dry cargo ship and sank in ballast	300 tons fuel	26 916
WAFRA	28 339	Off Cape Agulhas, South Africa	Became disabled and grounded; finally deliberately sunk	Crude	Rands 450 000
PANTHER	15 841	Off S. Goodwins, UK	Ran aground	Crude	49 579
JULIANA	12 200	Off Nigata, Japan	Ship broke in two after grounding in heavy weather	6 000 - 7 000 crude	

<u>Name of ship</u>	<u>GRT</u>	<u>Location of incident</u>	<u>Brief details of incident</u>	<u>Quantity of oil spilled and type of oil</u>	<u>Reimbursement to Government for clean-up costs</u>
SILVER CASTLE	12 174	Off South Africa	Collided in thick fog with dry cargo ship	Crude	
TOMANO	46 988	Off Portland, Maine, USA	Leakage of oil; hull fracture	150 tons fuel	
ZOE COLOCOTRONI	15 645	Off Puerto Rico	Dumping of oil	1 500 000 gallons crude	
ESSO BRUSSELS	26 467	Off New York, USA	Struck by dry cargo ship whilst at anchor	Crude	
ST. SFYRIDON	22 332	Off Montreal, Canada	Collided with dry cargo vessel	Fuel	
NAPIER	23 690	Off W. coast Chile	Ran aground and subsequently broke in two and finally deliberately sunk		
COSMOS PIONEER	8 997	Off W. coast India	Ran aground and subsequently broke in two and finally deliberately sunk	Light diesel	
CONOCO BRITANNIA	58 277	Off River Humber, UK	Ran aground resulting in her anchor piercing a tank	Crude	
ARO	22 679	Off Portsmouth, USA	Leakage; hull fracture	Fuel	Approx \$US 100 000
METTULA	104 379	Magellan Strait, Chile	Grounding	47 000 tons crude 4 000 tons fuel	

<u>Name of ship</u>	<u>GRT</u>	<u>Location of incident</u>	<u>Brief details of incident</u>	<u>Quantity of oil spilled and type of oil</u>	<u>Reimbursement to Government for clean-up costs</u>
TRANSURON	11 971	Kiltan Island, Indian Ocean	Grounding	5 000 tons	
UNIVERSE LEADER	51 400	Bantry Bay, Eire	Sea suction valve fault	2 500 tons crude	
SHOWA MARU	116 136	Malacca Strait, Singapore	Grounding	3 500 tons crude	
AFRAN BOOYAC	104 150	Bantry Bay, Eire	Collision	500 tons fuel	
MICHAEL C. LEMOS	113 552	St. Croix, Virgin Islands		10 000 gals -50 000 gals	
ARGO MERCHANT	18 743	Nantucket Island, USA	Grounding	7 million gals fuel	
ESSO BERNICIA	96 900	Sullom Voe, UK	Collision	1160 tons fuel	
BETELGEUSE	61 766	Bantry Bay, Eire	Explosion	7 000 tons crude	

ANNEX IV

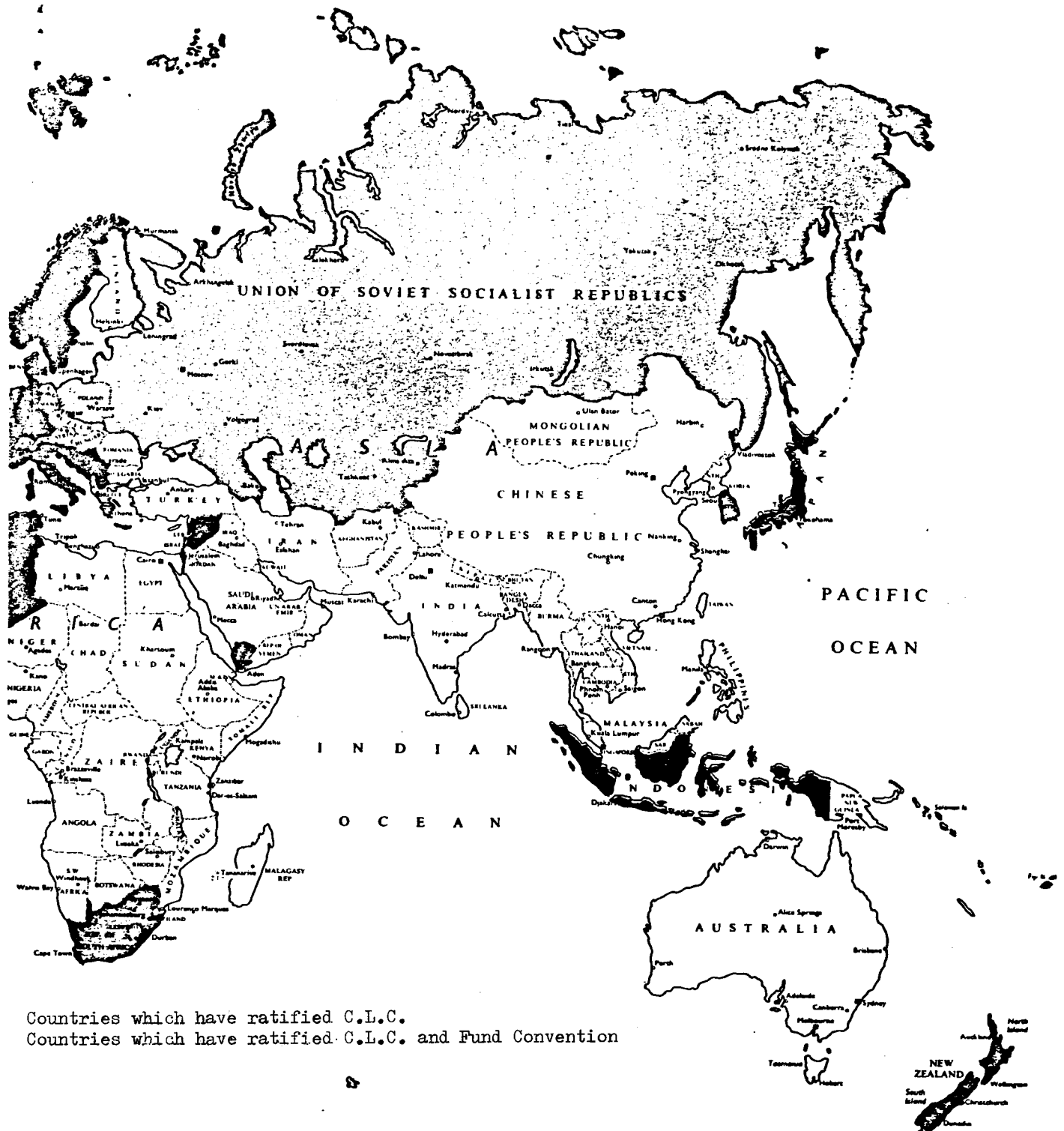
STATES THAT HAVE RATIFIED THE 1971 CONVENTION



Scale at Equator 1:75,000,000

500 0 1,000 2,000 Miles
500 0 1,000 2,000 3,000 Kms

October 1979



Countries which have ratified C.L.C.
Countries which have ratified C.L.C. and Fund Convention

This map has been transmitted to the authors of the study by TOVALOP

ANNEX V

Contributing oil received by contracting States in 1978

Contracting State	Number of oil tankers	Percentage of contributing oil receipts	Gross tonnage
Algeria	20	0.066	642 675
Bahamas	4	3.527	14 506
Denmark	74	1.330	2 902 383
France	106	14.131	7 714 800
Germany, Federal Republic of	121	8.711	3 418 607
Ghana	(figures not available)	0.137	
Indonesia	75	1.801	105 240
Italy		18.212	
Japan	1 428	36.521	16 385 739
Liberia	821	0.022	49 778 422
Monaco			
Norway	216	0.893	13 893 821
Sweden	106	2.464	3 075 005
Syrian Arab Republic	(figures not available)	0.211	
Tunisia	2	0.170	27 030
Tuvalu			
United Kingdom	441	10.401	14 731 430
Hong Kong		0.407	
Yugoslavia	29	0.997	214 779

ANNEX VI

CRISTAL PLAN:
COMPENSATION PAID TO VICTIMS OF ACCIDENTS

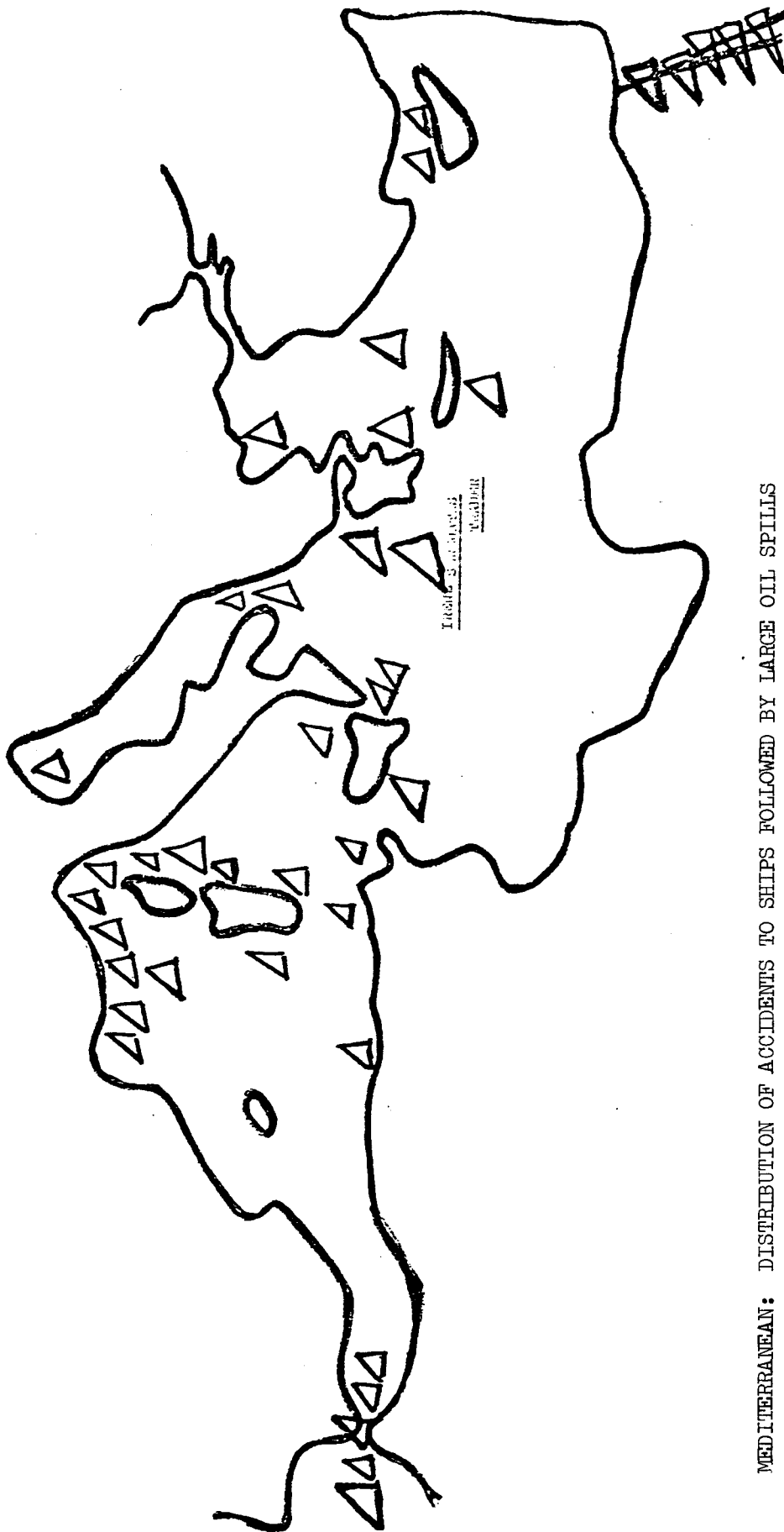
I. Paid to 18 October 1979

<u>Date of incident</u>		<u>Name of vessel</u>	<u>Amount paid</u> (US dollars)
March	1972	William G. Walkeley	2 324
January	1973	Hiyoshi Maru No. 2	280 720
May	1973	Nissei Maru	463 582
January	1974	Onward Enterprise	9 496
April	1974	Imperial Sarnia	1 296 291
October	1974	Nikko Maru	627 919
January	1975	Corinthos and Queeny	651 044
April	1975	Shell Barge No. 2	690 221
April	1975	Mitsu Maru No. 3	685 890
February	1977	Ethel H.	1 010 863
September	1977	Toyofuji Maru No. 2	374 514
May	1978	Eleni V.	19 740
		Total	<u>6 112 604</u>

II. Recent cases which are potential claims to CRISTAL

<u>Nationality of vessel</u>	<u>Name of vessel</u>	<u>Area of accident</u>
Liberia	AMOCO CADIZ	France
Greek	CHRISTAS BITAS	Wales (United Kingdom)
French	BETLGEUSE	Ireland
United States	CHEVERON	Houston, Texas
United Kingdom	KURDISTAN	Canada
USSR	ANTONIO GRAMSCI	Baltic Sea

ANNEX VII



MEDITERRANEAN: DISTRIBUTION OF ACCIDENTS TO SHIPS FOLLOWED BY LARGE OIL SPILLS

The IRENE SERENATAS, a Greek tanker carrying 100,000 tonnes of crude, sank in the Peloponnese on 24 February 1980

ANNEX VIII

INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE
LIABILITY OF OWNERS OF SEA-GOING SHIPS

Brussels, 10 October 1957^{1/}

Article 1

(1) The owner of a sea-going ship may limit his liability in accordance with Article 3 of this Convention in respect of claims arising from any of the following occurrences, unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner:

(a) Loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship;

(b) Loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible or any person not on board the ship for whose act, neglect or default the owner is responsible: provided, however, that in regard to the act, neglect or default of this last class of person, the owner shall only be entitled to limit his liability when the act, neglect or default is one which occurs in the navigation or the management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers;

(c) Any obligation or liability imposed by any law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such ship) and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways.

(2) In the present Convention the expression "personal claims" means claims resulting from loss of life and personal injury; the expression "property claims" means all other claims set out in paragraph (1) of this Article.

(3) An owner shall be entitled to limit his liability in the cases set out in paragraph (1) of this Article even in cases where his liability arises, without proof of negligence on the part of the owner or of persons for whose conduct he is responsible, by reason of his ownership, possession, custody or control of the ship.

(4) Nothing in this Article shall apply:

(a) To claims for salvage or to claims for contribution in general average;

(b) To claims by the Master, by members of the crew, by any servants of the owner on board the ship or servants of the owner whose duties are connected with the ship, including the claims of their heirs, personal representatives or dependents, if under the law governing the contract of service between the owner

^{1/} Entered into force on 31 May 1968 - States parties (as at 1 July 1978):
Algeria; Belgium; Denmark; Egypt; Fiji; Finland; France; Germany, Federal Republic of;
Ghana; Guyana; Iceland; India; Iran; Israel; Japan; Madagascar; Mauritius; Monaco;
Morocco; Netherlands; Norway; Poland; Portugal; Singapore; Spain; Sweden;
Switzerland; Syria; Tonga; United Kingdom; Zaire.

and such servants the owner is not entitled to limit his liability in respect of such claims or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 3 of this Convention.

(5) If the owner of a ship is entitled to make a claim against a claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

(6) The question upon whom lies the burden of proving whether or not the occurrence giving rise to the claim resulted from the actual fault or privity of the owner shall be determined by the lex fori.

(7) The act of invoking limitation of liability shall not constitute an admission of liability.

Article 2

(1) The limit of liability prescribed by Article 3 of this Convention shall apply to the aggregate of personal claims and property claims which arise on any distinct occasion without regard to any claims which have arisen or may arise on any other distinct occasion.

(2) When the aggregate of the claims which arise on any distinct occasion exceeds the limits of liability provided for by Article 3 the total sum representing such limits of liability may be constituted as one distinct limitation fund.

(3) The fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

(4) After the fund has been constituted, no claimant against the fund shall be entitled to exercise any right against any other assets of the shipowner in respect of his claim against the fund, if the limitation fund is actually available for the benefit of the claimant.

Article 3

(1) The amounts to which the owner of a ship may limit his liability under Article 1 shall be:

(a) Where the occurrence has only given rise to property claims, an aggregate amount of 1,000 francs for each ton of the ship's tonnage;

(b) Where the occurrence has only given rise to personal claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage;

(c) Where the occurrence has given rise both to personal claims and property claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage, of which a first portion amounting to 2,100 francs for each ton of the ship's tonnage shall be exclusively appropriated to the payment of personal claims and of which a second portion amounting to 1,000 francs for each ton of the ship's tonnage shall be appropriated to the payment of property claims: Provided however that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the fund.

(2) In each portion of the limitation fund the distribution among the claimants shall be made in proportion to the amounts of their established claims.

(3) If before the fund is distributed the owner has paid in whole or in part any of the claims set out in Article 1, paragraph (1), he shall pro tanto be placed in the same position in relation to the fund as the claimant whose claim he has paid, but only to the extent that the claimant whose claim he has paid would have had a right of recovery against him under the national law of the State where the fund has been constituted.

(4) Where the shipowner establishes that he may at a later date be compelled to pay in whole or in part any of the claims set out in Article 1, paragraph (1), the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable the shipowner at such later date to enforce his claim against the fund in the manner set out in the preceding paragraph.

(5) For the purpose of ascertaining the limit of an owner's liability in accordance with the provisions of this Article the tonnage of a ship of less than 300 tons shall be deemed to be 300 tons.

(6) The franc mentioned in this Article shall be deemed to refer to a unit consisting of sixty five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph (1) of this Article shall be converted into the national currency of the State in which limitation is sought on the basis of the value of that currency by reference to the unit defined above at the date on which the shipowner shall have constituted the limitation fund, made the payment or given a guarantee which under the law of that State is equivalent to such payment.

(7) For the purpose of this convention tonnage shall be calculated as follows:

- In the case of steamships or other mechanically propelled ships there shall be taken the net tonnage with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage;
- In the case of all other ships there shall be taken the net tonnage.

Article 4

Without prejudice to the provisions of Article 3, paragraph (2) of this Convention, the rules relating to the constitution and distribution of the limitation fund, if any, and all rules of procedure shall be governed by the national law of the State in which the fund is constituted.

Article 5

(1) Whenever a shipowner is entitled to limit his liability under this Convention, and the ship or another ship or other property in the same ownership has been arrested within the jurisdiction of a Contracting State or bail or other security has been given to avoid arrest, the Court or other competent authority of such State may order the release of the ship or other property or of the security given

if it is established that the shipowner has already given satisfactory bail or security in a sum equal to the full limit of his liability under this Convention and that the bail or other security so given is actually available for the benefit of the claimant in accordance with his rights.

(2) Where, in circumstances mentioned in paragraph (1) of this Article, bail or other security has already been given:

(a) at the port where the accident giving rise to the claim occurred;

(b) at the first port of call after the accident if the accident did not occur in a port;

(c) at the port of disembarkation or discharge if the claim is a personal claim or relates to damage to cargo;

the Court or other competent authority shall order the release of the ship or the bail or other security given, subject to the conditions set forth in paragraph (1) of this Article.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply likewise if the bail or other security already given is in a sum less than the full limit of liability under this Convention: Provided that satisfactory bail or other security is given for the balance.

(4) When the shipowner has given bail or other security in a sum equal to the full limit of his liability under this Convention such bail or other security shall be available for the payment of all claims arising on a distinct occasion and in respect of which the shipowner may limit his liability.

(5) Questions of procedure relating to actions brought under the provisions of this Convention and also the time limit within which such actions shall be brought or prosecuted shall be decided in accordance with the national law of the Contracting State in which the action takes place.

Article 6

(1) In this Convention the liability of the shipowner includes the liability of the ship herself.

(2) Subject to paragraph (3) of this Article, the provisions of this Convention shall apply to the charterer, manager and operator of the ship, and to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment, in the same way as they apply to an owner himself: Provided that the total limits of liability of the owner and all such other persons in respect of personal claims and property claims arising on a distinct occasion shall not exceed the amounts determined in accordance with Article 3 of this Convention.

(3) When actions are brought against the master or against members of the crew, such persons may limit their liability even if the occurrence which gives rise to the claims resulted from the actual fault or privity of one or more of such persons. If, however, the master or member of the crew is at the same time the owner, co-owner, charterer, manager or operator of the ship the provisions of

this paragraph shall only apply where the act, neglect or default in question is an act, neglect or default committed by the person in question in his capacity as master or as member of the crew of the ship.

Article 7

This Convention shall apply whenever the owner of a ship, or any other person having by virtue of the provisions of Article 6 hereof the same rights as an owner of a ship, limits or seeks to limit his liability before the Court of a Contracting State or seeks to procure the release of a ship or other property arrested or the bail or other security given within the jurisdiction of any such State.

Nevertheless, each Contracting State shall have the right to exclude, wholly or partially, from the benefits of this Convention any non-Contracting State, or any person who, at the time when he seeks to limit his liability or to secure the release of a ship or other property arrested or the bail or other security in accordance with the provisions of Article 5 hereof, is not ordinarily resident in a Contracting State, or does not have his principal place of business in a Contracting State, or any ship in respect of which limitation of liability or release is sought which does not at the time specified above fly the flag of a Contracting State.

Article 8

Each Contracting State reserves the right to decide what other classes of ship shall be treated in the same manner as sea-going ships for the purposes of this Convention.

Article 9

This Convention shall be open for signature by the States represented at the tenth session of the Diplomatic Conference on Maritime Law.

Article 10

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government which shall notify through diplomatic channels all signatory and acceding States of their deposit.

Article 11

(1) This Convention shall come into force six months after the date of deposit of at least ten instruments of ratification, of which at least five by States that have each a tonnage equal or superior to one million gross tons of tonnage.

(2) For each signatory State which ratifies the Convention after the date of deposit of the instrument of ratification determining the coming into force such as is stipulated in paragraph (1) of this Article this Convention shall come into force six months after the deposit of their instrument of ratification.

Article 12

Any State not represented at the tenth session of the Diplomatic Conference on Maritime Law may accede to this Convention.

The instruments of accession shall be deposited with the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of the deposit of any such instruments.

The Convention shall come into force in respect of the acceding State six months after the date of the deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article 11 (1).

Article 13

Each High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. Nevertheless, this denunciation shall only take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of such notification.

Article 14

(1) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Government that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of this Convention in respect of such High Contracting Party.

(2) Any High Contracting Party which has made a declaration under paragraph (1) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such territory. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government;

(3) The Belgian Government shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this article.

Article 15

Any High Contracting Party may three years after the coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a conference be convened in order to consider amendments to this Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the Conference within six months thereafter.

Article 16

In respect of the relations between States which ratify this Convention or accede to it, this Convention shall replace and abrogate the International Convention for the unification of certain rules concerning the limitation of the liability of the owners of sea-going ships, signed at Brussels, on the 25th of August 1924.

In Witness whereof the Plenipotentiaries, duly authorized, have signed this Convention.

Done at Brussels, this tenth day of October 1957, in the French and English languages, the two texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

ANNEX IX

DRAFT ARTICLES FOR A CONVENTION ON LIABILITY AND COMPENSATION
IN CONNECTION WITH THE CARRIAGE OF NOXIOUS AND HAZARDOUS
SUBSTANCES BY SEA 1/

Article 1 2/

For the purposes of this Convention:

1. "Ship" means any sea-going vessel and any seaborne craft of any type whatsoever [carrying hazardous substances as cargo]. 3/ CLC I(1)
2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions. CLEE I(2)
CLEE 1(5)
3. "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. [In the case of a ship under bareboat charter "owner" shall mean the bareboat charterer.] However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company. CLC I(3)
4. "Shipper" means the person or persons indicated as such in the bill of lading or, where no bill of lading has been issued, in any other document evidencing the receipt of the hazardous substances. If no such document has been issued "shipper" means the person by whom or in whose name or on whose behalf the hazardous substances are actually delivered for carriage.

1/ References to other conventions containing identical, equivalent or similar provisions have been inserted in the right-hand column. The relevant texts are identified as follows:

- LIMC = Convention on Limitation of Liability for Maritime Claims, 1976
- CLC = International Convention on Civil Liability for Oil Pollution Damage, 1969
- CLEE = Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources
- FUND = International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
- LONS = Convention on the Liability of Operators of Nuclear Ships, 1962

2/ Articles 1 and 2 similar for Alternatives I, II and III

3/ These words may be superfluous in the light of the wording of the subsequent articles.

5. "Hazardous substance" means any substance listed in the Annex to this Convention.

6. ["Damage" means loss of life or personal injury and loss or damage to property caused outside the ship carrying the hazardous substances which arises out of or results from one or more specific hazardous properties of one or more of such substances or any combination of such properties; "damage" includes the costs of preventive measures and further loss or damage caused by preventive measures.]

7. "Preventive measures" means any reasonable measures taken by any person [to prevent a grave and imminent threat of an incident involving any hazardous substance or,] after such incident has occurred, to prevent or minimize damage.

8. "Incident" means any occurrence, or series of occurrences having the same origin, which causes damage.

CLC I(8)
CLEE 1(8)

9. "Applicable national law" means the national law of the court having jurisdiction under this Convention, including any rules of such national law relating to conflict of laws. "Applicable national law" also includes the rules of any international convention to be applied by the court.

LONS I(12)

Article 2

(Geographical scope of application)

ALTERNATIVE I

Basis of liability

Article 3

CLC III

1. Except as provided in paragraphs 2 and 3, the owner at the time of an incident of a ship carrying hazardous substances as cargo and the shipper of any such substance causing damage during its carriage by sea shall be jointly and severally liable for such damage, provided that if an incident consists of a series of occurrences the liability shall attach to the owner at the time of the first of such occurrences. However, the liability of the owner and the shipper shall not exceed the limits which may be applicable in accordance with Articles 6 and 7.

2. No liability shall attach to the owner or the shipper if either of them proves that the damage:

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or

(b) was wholly caused by an act or omission done with the intent to cause damage by a third party, or

(c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

3. If the owner or the shipper proves that the damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner and the shipper may be exonerated wholly or partially from their liability to such person.

4. No claim for compensation for damage shall be made against the owner or the shipper otherwise than in accordance with this Convention. No claim for damage under this Convention or otherwise may be made against the servants or agents of the owner or the shipper.

Article 4

1. Whenever the damage engages the liability of two or more shippers of hazardous substances carried in the same ship and the damage is not reasonably separable, the shippers involved shall be jointly and severally liable for such damage together with the owner of the ship. However, the liability of any one shipper shall not exceed any limit which may be applicable to him in accordance with Article 7. LONS VII(1)

2. Whenever damage has resulted from an incident involving two or more ships carrying hazardous substances as cargo the owners of all the ships concerned and the shippers of the hazardous substances carried on board these ships, in so far as their liability is engaged, shall be jointly and severally liable for all such damage which is not reasonably separable. CLC IV
CLEE 5(1)

Article 5

LONS IV

Whenever both damage as defined in Article 1, paragraph 6 and other damage have been caused by one incident the entire damage shall be compensated according to the rules of this Convention to the extent that these damages are not reasonably separable.

Limitation of liabilityArticle 6

The limitation of the liability of the owner of a ship under this Convention shall be [determined by the applicable national law] [determined in accordance with the provisions of the Convention on Limitation of Liability for Maritime Claims, 1976] [limited to [] units of account in respect of any one incident] [limited to [] units of account in respect of any one incident, this amount to be obtained by applying the limitation amounts of the Convention on Limitation of Liability for Maritime Claims, 1976 and adding the balance thereto].

Article 7

1. The liability of the shipper under this Convention shall be limited to [] units of account in respect of any one incident.
2. The shipper shall not be entitled to limit his liability if it is proved that the damage resulted from his personal act or omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result. LLMC 4
3. For the purpose of availing himself of the benefit of the limitation provided for in paragraph 1, the shipper shall constitute a fund for the total sum representing the limit of his liability with the court or other competent authority of any one of the Contracting States in which action is brought under Article 15. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the court or another competent authority. CLC V(3)
4. The fund shall be distributed among the claimants in proportion to the amounts of their established claims. CLC V(4)
CLEE 6(6)
5. If before the fund is distributed the shipper or any of his servants or agents or any person providing him insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention. CLC V(5)
CLEE 6(7)

6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law.

CLC V(6)
CLEE 6(8)

7. Where the shipper or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraph 5 or 6, had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

CLC V(7)
CLEE 6(9)

8. A shipper who has taken preventive measures shall in respect of the costs of those measures have the same rights against the fund as any other claimant.

CLEE 6(10)

9. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the shipper. Such fund may be constituted even in the event that according to paragraph 2 the shipper shall not be entitled to limit his liability but its constitution shall in that case not prejudice the rights of any claimant against the shipper.

CLC V(11)

Article 8

CLC VI
CLEE 7

1. Where the shipper, after an incident, has constituted a fund in accordance with Article 7 and is entitled to limit his liability:

(a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the shipper in respect of such claim;

(b) the Court or other competent authority of any Contracting State shall order the release of any property belonging to the shipper which has been arrested or seized in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the Court administering the fund and the fund is actually available and freely transferable in respect of his claim.

Article 9

LLMC 8

1. The unit of account referred to in Article 7 is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in Article 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund is constituted, payment is made, or security is

given which under the law of that State is equivalent to such payment. ^{1/} The value of a national currency in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that Contracting State.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval, or at the time of ratification, acceptance, approval or accession, or at any time thereafter, declare that the limit of liability provided for in this Convention to be applied in their territories shall be [] monetary units.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion shall be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amount in Article 7 as is expressed there in units of account. Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article ... and whenever there is a change in either.

Rights of recourse

Article 10

1. Subject to paragraph 3, the shipper or any person providing him with insurance or other financial security who has paid compensation under this Convention shall have a right of recourse against the owner of the ship on board of which the hazardous substances causing the damage have been carried, unless the damage has been caused by the negligence of the shipper, his servants or agents.

2. Subject to paragraph 3, the owner who has paid compensation under this Convention shall have a right of recourse against the shipper of the substance causing the damage if the damage has been caused by the negligence of the shipper, his servants or agents.

3. Where negligence of the owner, his servants or agents as well as of the shipper, his servants or agents have contributed to the damage, the owner and the shipper shall each bear such part of the total liability as corresponds to the degree of fault attaching to him.

^{1/} One delegation proposed that there be only one conversion date and that this be the date of the incident.

4. The liability of the owner or of the shipper in accordance with paragraphs 1 to 3 shall not exceed any limit of liability to which he may be entitled under Article 6 or Article 7.

5. [Paragraphs 1 to 4 shall not apply to the extent that recourse is not permitted under a contract.] 1/

6. Except as provided in paragraphs 1 to 5 this Convention shall not affect any right of recourse of the owner or the shipper nor the liability of shippers inter se.

Compulsory Insurance 2/

Article 11

1. The shipper of a consignment of hazardous substances shall be required to maintain insurance or other financial security, such as a bank guarantee in the sum laid down in Article 7, paragraph 1, to cover his liability for damage under this Convention.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued by the insurer or other person providing financial security for the shipper's liability with respect to each consignment. This certificate shall be delivered by the shipper to the owner when the consignment is handed over for carriage by sea. [It shall be issued in a Contracting State.]

3. This certificate shall be in the form of the annexed model and shall contain the following particulars:

(a) the name of the ship or the ships on board of which the consignment is expected to be carried and their port of registration;

(b) the name and principal place of business of the shipper;

(c) the particulars, including the leading marks if appropriate, necessary for identification of the consignment; these particulars shall also contain a description of the substances which is in accordance with the requirements of any applicable international regulations relating to sea carriage of dangerous goods;

(d) the type of security referred to in paragraph 1;

(e) the name and principal place of business of the insurer or other person giving security and, where appropriate, the place where the insurance or security is established;

(f) the period of validity of the insurance or other security.

1/ One delegation proposed that the existing text be replaced by the following: "Paragraphs 1 to 4 cannot be set aside by contractual agreement between the shipowner and the shipper. A right of recourse can only be waived after the damage has occurred."

2/ Some delegations proposed that a system of compulsory insurance should be imposed on the shipowner as well as the shippers.

4. The certificate shall be issued in English or French or shall, if issued in any other language, include a translation into one of those languages.
5. The insurance or other financial guarantee shall be effected with an insurer or other person providing security approved for this purpose by [the State where the certificate is issued.] [any Contracting State].
6. The insurance or security shall cover the entire period of the shipper's liability.
7. [Certificates issued in a Contracting State in accordance with this Article shall be accepted in the other Contracting States for all purposes covered by the present Convention. Nevertheless] a Contracting State may at any time request consultation with another Contracting State should it believe that an insurer or other person providing security approved by such State in accordance with paragraph 5 is not financially capable of meeting the obligations imposed by the Convention.
8. Any claim for compensation for damage under this Convention may be brought directly against the insurer or other person providing financial security for the shipper's liability for damage. In such a case the defendant may, irrespective of the fact whether or not the shipper shall be entitled to limit his liability, avail himself of the limit prescribed in Article 7, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the shipper) which the shipper himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the damage resulted from the wilful misconduct of the shipper himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the shipper against him nor may he dispute any fact indicated in the certificate issued by him. The defendant shall in any event have the right to require the shipper to be joined in the proceedings. CLC VII(8)
9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available in the first place for the satisfaction of claims under this Convention. CLEE 8(4)
10. Where the shipper is a Contracting State [or, in case a Contracting State is a Federal State, a state, republic or canton of such State], the shipper shall not be required to maintain insurance or other financial security to cover its liability. CLEE 8(5)

Article 12

1. The owner shall ensure that no consignment of hazardous substances is taken over for carriage on board his ship, unless a certificate has been issued in accordance with the requirements of Article 11.
2. If the owner does not prove that such certificate has been issued with respect to the consignment in question or does not reveal the identity of the shipper, he shall be deemed also to be the shipper for the purpose of this Convention.

3. However, paragraph 2 shall not apply, if the owner proves that the shipper failed to inform him of the hazardous nature of the substance, that he had no reasonable grounds to suspect that the particulars furnished by the shipper were inaccurate and that he had no reasonable means of checking these particulars. For the purposes of this paragraph the owner shall be liable for the act, neglect and default of any person rendering service in connection with the exploitation of the ship, performed within the scope of his employment.

Claims and actions

Article 13

1. Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within [three] years from the date at which the person suffering the damage knew or ought reasonably to have known of the damage. However, in no case shall an action be brought after [six] years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the [six] years' period shall run from the date of the first such occurrence. ^{1/}

CLC VIII
CLEE 10

2. Notwithstanding paragraph 1, any right of recourse under Article 10, paragraphs 1 to 3, shall in no case be extinguished before the expiry of a period of [six] months as from the date on which the person seeking recourse acquired knowledge of the bringing of an action against him under this Convention.

Article 14

1. The shipper or his insurer or any other person providing financial security for the shipper's liability for damage against whom an action has been brought under this Convention, shall have the right to require the owner by notification to be joined in the proceedings. Likewise, the owner shall have the same rights towards the shipper or his insurer or any other person providing financial security for the shipper's liability.

FUND 7(6)

2. Where a notification referred to in paragraph 1 has been made in accordance with the formalities required by the law of the court seized and in such time and in such manner that the party notified has been in fact in a position effectively to intervene in the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon such party in the sense that the facts and findings in that judgement may not be disputed by the party notified, even if such party has not actually intervened in the proceedings.

FUND 7(6)

3. Each Contracting State shall ensure that such parties as mentioned in paragraph 1 shall have the right to intervene as a party to any legal proceedings instituted under this Convention before a competent court of that State.

^{1/} One delegation proposed that the last two sentences be deleted.

4. Except as otherwise provided by paragraph 1 no party shall be bound by any judgement or decision in proceedings or by any settlement to which he has not been a party.

Article 15

CLC IX
CLEE 11

1. Where an incident has caused damage [in the territory, including the territorial sea] of one or more Contracting States, or preventive measures have been taken, actions for compensation may only be brought in the courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.
2. Each Contracting State shall ensure that its Courts possess the necessary jurisdiction to entertain such actions for compensation.
3. After a fund has been constituted, either by the owner according to the applicable law under Article 6, or by the shipper in accordance with Article 7, the courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

Article 16

CLC X
CLEE 12

1. Any judgement given by a Court with jurisdiction in accordance with Article 15 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State, except:
 - (a) where the judgement was obtained by fraud; or
 - (b) where the defendant was not given reasonable notice and a fair opportunity to present his case.
2. A judgement recognized under paragraph 1 shall be enforceable in each Contracting State as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Supersession clause

Article 17

CLC XII

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which the Convention is opened for signature, but only to the extent that such conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of Contracting States to non-Contracting States arising under such conventions.

ALTERNATIVE II

Liability of the owner

Article 3

- cf. Article 3(1) of Alternative I
1. Except as provided in paragraphs 2 and 3 the owner at the time of an incident of a ship carrying hazardous substances as cargo shall be liable for damage caused by any such substance during its carriage by sea, provided that if an incident consists of a series of occurrences the liability shall attach to the owner at the time of the first of such occurrences. CLC III
- Similar to Article 3(2) of Alternative I
2. No liability shall attach to the owner if he proves that the damage:
- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional and irresistible character, or
 - (b) was wholly caused by an act or omission done with the intent to cause damage by a third party provided however that for the purpose of this provision the shipper of the hazardous substance causing the damage shall not be considered a third party, or
 - (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
- Similar to Article 3(3) of Alternative I
3. If the owner proves that the damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.
- Similar to Article 3(4) of Alternative I
4. No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention. No claim for damage under this Convention or otherwise may be made against the servants or agents of the owner.
5. Nothing in this Convention shall prejudice any right of recourse of the owner against the shipper of the substance causing the damage or against third parties.

Similar to
Article 4(2) of
Alternative I

Article 4

CIC IV
CLEE 5(1)

Whenever damage has resulted from an incident involving two or more ships carrying hazardous substances as cargo the owners of all ships concerned, unless exonerated under Article 3, shall be jointly and severally liable for all such damage which is not reasonably separable.

Identical with
Article 5 of
Alternative I

Article 5

LONS IV

Whenever both damage as defined in Article 1, paragraph 6 and other damage have been caused by one incident the entire damage shall be compensated according to the rules of this Convention to the extent that these damages are not reasonably separable.

Similar to
Article 6 of
Alternative I

Article 6

The limitation of the liability of the owner of a ship under this Convention shall be [determined by the applicable national law] [determined in accordance with the provisions of the Convention on Limitation of Liability for Maritime Claims, 1976] [limited to [] units of account in respect of any one incident] [limited to [] units of account in respect of any one incident, this amount to be obtained by applying the limitation amounts of the Convention on Limitation of Liability for Maritime Claims, 1976 and adding the balance thereto].

Liability of the shipper

Article 7

1. The shipper of a hazardous substance shall be liable to pay compensation to any person suffering damage caused by that substance during its carriage by sea if such person has been unable to obtain from the owner full compensation for the damage under this Convention:

(a) because the damage exceeds the owner's liability under this Convention as limited pursuant to the applicable national law in accordance with Article 6;

(b) because the owner liable for the damage under Article 3 is financially incapable of meeting his obligations in full; an owner being treated as financially incapable of meeting his obligations if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under this Convention after having taken all reasonable steps to pursue the legal remedies available to him.

Similar to
Article 4(1)
of Alternative I

2. Whenever the damage engages the liability of two or more shippers of hazardous substances carried in the same ship or in different ships and the damage is not reasonably separable, the shippers involved shall be jointly and severally liable for such damage. However, the liability of any one shipper shall not exceed the limit laid down in Article 8. LONS VII(1)

3. The shipper shall be entitled to invoke all defences and remedies available to the owner under Article 3, paragraphs 2 and 3.

4. Nothing in this Convention shall prejudice any right of recourse of the shipper against the owner or third parties or of shippers inter se.

Identical with
Article 7 of
Alternative I

Article 8

1. The liability of the shipper under this Convention shall be limited to [] units of account in respect of any one incident.

2. The shipper shall not be entitled to limit his liability if it is proved that the damage resulted from his personal act or omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result. LLMC 4

3. For the purpose of availing himself of the benefit of the limitation provided for in paragraph 1 the shipper shall constitute a fund for the total sum representing the limit of his liability with the court or other competent authority of any one of the Contracting States in which action is brought under Article 14. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the court or another competent authority. CLC V(3)

4. The fund shall be distributed among the claimants in proportion to the amounts of their established claims. CLC V(4)
CLEE 6(6)

5. If before the fund is distributed the shipper or any of his servants or agents or any person providing him insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention. CLC V(5)
CLEE 6(7)

6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law.

CLC V(6)
CLEE 6(8)

7. Where the shipper or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraph 5 or 6, had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

CLC V(7)
CLEE 6(9)

8. A shipper who has taken preventive measures shall in respect of the costs of those measures have the same rights against the fund as any other claimant.

CLEE 6(10)

9. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the shipper. Such fund may be constituted even in the event that according to paragraph 2 the shipper shall not be entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the shipper.

CLC V(11)

Identical with
Article 8 of
Alternative I

Article 9

CLC VI
CLEE 7

1. Where the shipper, after an incident, has constituted a fund in accordance with Article 8, and is entitled to limit his liability,

(a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the shipper in respect of such claim;

(b) the court or other competent authority of any Contracting State shall order the release of any property belonging to the shipper which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of his claim.

Identical with
Article 9
of Alternative I

Article 10

LLMC 8

1. The unit of account referred to in Article 8 is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in Article 8 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund is constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The value of a national currency in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that Contracting State.
2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval, or at the time of ratification, acceptance, approval or accession, or at any time thereafter, declare that the limit of liability provided for in this Convention to be applied in their territories shall be [] monetary units.
3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion shall be made according to the law of the State concerned.
4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amount in Article 8 as is expressed there in units of account. Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article ... and whenever there is a change in either.

Compulsory insurance

Identical with
Article 11 of
Alternative I

Article 11

1. The shipper of a consignment of hazardous substances shall be required to maintain insurance or other financial security, such as a bank guarantee in the sum laid down in Article 8, paragraph 1, to cover his liability for damage under this Convention.
2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued by the insurer or other person providing financial security for the shipper's liability with respect to each consignment. This certificate shall be delivered by the shipper to the owner when the consignment is handed over for carriage by sea. [It shall be issued in a Contracting State.]
3. This certificate shall be in the form of the annexed model and shall contain the following particulars:
 - (a) the name of the ship or the ships on board of which the consignment is expected to be carried and their port of registration;
 - (b) the name and principal place of business of the shipper;
 - (c) the particulars, including the leading marks if appropriate, necessary for identification of the consignment; these particulars shall also contain a description of the substances which is in accordance with the requirements of any applicable international regulations relating to sea carriage of dangerous goods;
 - (d) the type of security referred to in paragraph 1;
 - (e) the name and principal place of business of the insurer or other person giving security, and, where appropriate, the place where the insurance or security is established;
 - (f) the period of validity of the insurance or other security.
4. The certificate shall be issued in English or French or shall, if issued in any other language, include a translation into one of those languages.
5. The insurance or other financial guarantee shall be effected with an insurer or other person providing security approved for this purpose by [the State where the certificate is issued.] [any Contracting State].
6. The insurance or security shall cover the entire period of the shipper's liability.

7. Certificates issued in a Contracting State in accordance with this Article shall be accepted in the other Contracting States for all purposes covered by the present Convention. Nevertheless a Contracting State may at any time request consultation with another Contracting State should it believe that an insurer or other person providing security approved by such State in accordance with paragraph 6 is not financially capable of meeting the obligations imposed by the Convention.

8. Any claim for compensation for damage under this Convention may be brought directly against the insurer or other person providing financial security for the shipper's liability for damage. In such a case the defendant may, irrespective of the fact whether or not the shipper shall be entitled to limit his liability, avail himself of the limit prescribed in Article 8, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the shipper) which the shipper himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the damage resulted from the wilful misconduct of the shipper himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the shipper against him nor may he dispute any fact indicated in the certificate issued by him. The defendant shall in any event have the right to require the shipper to be joined in the proceedings. CLC VII(8)

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available in the first place for the satisfaction of claims under this Convention. CLEE 8(4)

10. Where the shipper is a Contracting State [or, in case a Contracting State is a Federal State, a state, republic or canton of such State,] the shipper shall not be required to maintain insurance or other financial security to cover its liability. CLEE 8(5)

Identical with
Article 12 of
Alternative I

Article 12

1. The owner shall ensure that no consignment of hazardous substances is taken over for carriage on board his ship, unless a certificate has been issued in accordance with the requirements of Article 11.

2. If the owner does not prove that such certificate has been issued with respect to the consignment in question or does not reveal the identity of the shipper, he shall be deemed also to be the shipper for the purpose of this Convention.

3. However, paragraph 1 shall not apply, if the owner proves that the shipper failed to inform him of the hazardous nature of the substance, that he had no reasonable grounds to suspect that the particulars furnished by the shipper were inaccurate and that he had no reasonable means of checking these particulars. For the purposes of this paragraph the owner shall be liable for the act, neglect and default of any person rendering service in connection with the exploitation of the ship, performed within the scope of his employment.

Claims and Actions

Article 13

Identical with
Article 13(1)
of Alternative I

1. Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within [three] years from the date at which the person suffering the damage knew or ought reasonably to have known of the damage. However, in no case shall an action be brought after [six] years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the [six] years' period shall run from the date of the first such occurrence. CLC VIII
CLEE 10

Similar to
Article 13(2)
of Alternative I

2. [Notwithstanding paragraph 1, any right of recourse of the owner against the shipper and of the shipper against the owner shall in no case be extinguished before the expiry of a period of [six] months as from the date on which the person seeking recourse acquired knowledge of the bringing of an action against him under this Convention.]

Identical with
Article 15 of
Alternative I

Article 14

CLC IX
CLEE 11

1. Where an incident has caused damage [in the territory, including the territorial sea] of one or more Contracting States, or preventive measures have been taken, actions for compensation may only be brought in the courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.

2. Each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation.

3. After a fund has been constituted, either by the owner according to the applicable law under Article 6, or by the shipper in accordance with Article 8, the courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

cf. Article 14
of Alternative I

Article 15

FUND 7(6)

1. Where an action under Article 3 for compensation for damage has been brought against the owner of the ship carrying the hazardous substances before a competent court in a Contracting State, the claimant shall be entitled under the national law of that State to notify the shipper of the hazardous substances which have caused the damage of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such manner that the shipper has been in fact in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the shipper in the sense that the facts and findings in that judgement may not be disputed by the shipper even if the shipper has not actually intervened in the proceedings.

2. Each Contracting State shall ensure that the shipper shall have the right to intervene as a party to any legal proceedings instituted before a competent court of that State against the owner.

3. Except as otherwise provided by paragraph 1 the shipper shall not be bound by any judgement or decision in proceedings to which he has not been a party or by any settlement to which he is not a party.

4. Paragraphs 1 to 3 shall also apply respectively to the insurer of the shipper or any other person providing financial security for his liability for damage in accordance with Article 11.

Identical with
Article 16 of
Alternative I

Article 16

CLC X
CLEE 12

1. Any judgement given by a court with jurisdiction in accordance with Article 14 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State, except:

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present his case.

2. A judgement recognized under paragraph 1 shall be enforceable in each Contracting State as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Supersession clause

Identical with
Article 17 of
Alternative I

Article 17

CLC XII

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which the convention is opened for signature, but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of Contracting States to non-Contracting States arising under such conventions.

ALTERNATIVE III

Basis of liability

Article 3

cf. Article 3(1) 1. Except as provided in paragraphs 3 and 4, a shipper of
of Alternatives I a hazardous substance shall be liable for damage caused by
and II that substance during its carriage by sea.

cf. Article 4 2. Whenever the damage engages the liability of two or more
of Alternatives I shippers of hazardous substances carried in the same ship or
and II the damage has resulted from an incident involving two or more
ships carrying hazardous substances, all shippers concerned
shall be jointly and severally liable for all such damage
which is not reasonably separable. However, the liability
of any one shipper shall not exceed any limit which may be
applicable to him in accordance with Article 5.

Similar to 3. No liability shall attach to the shipper if he CLC III(2)
Article 3(2) proves that the damage:
of Alternatives I
and II

(a) resulted from an act of war, hostilities,
civil war, insurrection or a natural phenomenon of an
exceptional and irresistible character, or

(b) was wholly caused by an act or omission done
with the intent to cause damage by a third party,
provided however that for the purpose of this provision
the owner of the ship carrying the hazardous substances
shall not be considered a third party, or

(c) was wholly caused by the negligence or other
wrongful act of any Government or other authority
responsible for the maintenance of lights or other
navigational aids in the exercise of that function.

Similar to Article 3(3) of Alternatives I and II 4. If the shipper proves that the damage resulted wholly or partially from an act or omission done with the intent to cause damage by the person who suffered the damage, or from the negligence of that person, the shipper may be exonerated wholly or partially from his liability. CLC III(3)

Similar to Article 3(4) of Alternatives I and II 5. No claim for compensation for damage shall be made against the shipper otherwise than in accordance with this Convention. No claim for damage under this Convention may be made against the servants or agents of the shipper. CLC III(4)

cf. Article 3(5) of Alternative II 6. Nothing in this Convention shall prejudice the question whether the shipper liable for damage in accordance with its provisions has a right of recourse.

Identical with Article 5 of Alternatives I and II Article 4 LONS IV

Whenever both damage as defined in Article 1, paragraph 6 and other damage have been caused by one incident, the entire damage shall be compensated according to the rules of this Convention to the extent that these damages are not reasonably separable.

Limitation of liability

Identical with Article 7 of Alternative I and Article 8 of Alternative II Article 5 LLMC 4

1. The liability of the shipper under this Convention shall be limited to [] units of account in respect of any one incident.

2. The shipper shall not be entitled to limit his liability if it is proved that the damage resulted from his personal act or omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result.

3. For the purpose of availing himself of the benefit of the limitation provided for in paragraph 1 the shipper shall constitute a fund for the total sum representing the limit of his liability with the court or other competent authority of any one of the Contracting States in which action is brought under Article 11. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the court or another competent authority. CLC V(3)

4. The fund shall be distributed among the claimants in proportion to the amounts of their established claims. CLC V(4)
CLEE 6(6)
5. If before the fund is distributed the shipper or any of his servants or agents or any person providing him insurance or other financial security has as a result of the incident in question paid compensation for damage, such person shall, up to the amount he has paid acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention. CLC V(5)
CLEE 6(7)
6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law. CLC V(6)
CLEE 6(8)
7. Where the shipper or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraph 5 or 6, had the compensation been paid before the fund was distributed, the court or other competent Authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund. CLC V(7)
CLEE 6(9)
8. A shipper who has taken preventive measures shall in respect of the costs of those measures have the same rights against the fund as any other claimant. CLEE 6(10)
9. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the shipper. Such fund may be constituted even in the event that according to paragraph 2 the shipper shall not be entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the shipper. CLC V(11)

Identical with
Article 8 of
Alternative I
and Article 9
of Alternative II

Article 6

CLC VI
CLEE 7

1. Where the shipper, after an incident, has constituted a fund in accordance with Article 5, and is entitled to limit his liability,

(a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the shipper in respect of such claim;

(b) the Court or other competent authority of any Contracting State shall order the release of any property belonging to the shipper which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

Identical with
Article 9 of
Alternative I
and Article 10
of Alternative II

Article 7

LLMC 8

1. The unit of account referred to in Article 5 is the Special Drawing Right as defined by the International Monetary Fund. The amount mentioned in Article 5 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund is being constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that Contracting State.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval, or at the time of ratification, acceptance, approval or accession, or at any time thereafter, declare that the limit of liability provided for in this Convention to be applied in their territories shall be [] monetary units.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion shall be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amount in Article 5 as is expressed there in units of account. Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article ... and whenever there is a change in either.

Compulsory insurance.

Article 8

Identical with
Article 11 of
Alternatives I
and II

1. The shipper of a consignment of hazardous substances shall be required to maintain insurance or other financial security, such as a bank guarantee in the sum laid down in Article 5, paragraph 1, to cover his liability for damage under this Convention.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued by the insurer or other person providing financial security for the shipper's liability with respect to each consignment. This certificate shall be delivered by the shipper to the owner when the consignment is handed over for carriage by sea. [It shall be issued in a Contracting State.]

3. This certificate shall be in the form of the annexed model and shall contain the following particulars:

(a) the name of the ship or the ships on board of which the consignment is expected to be carried and their port of registration;

(b) the name and principal place of business of the shipper;

(c) the particulars, including the leading marks if appropriate, necessary for identification of the consignment; these particulars shall also contain a description of the substances which is in accordance with the requirements of any applicable international regulations relating to sea carriage of dangerous goods;

- (d) the type of security referred to in paragraph 1;
- (e) the name and principal place of business of the insurer or other person giving security, and, where appropriate, the place where the insurance or security is established;
- (f) the period of validity of the insurance or other security.

4. The certificate shall be issued in English or French or shall, if issued in any other language, include a translation into one of those languages.

5. The insurance or other financial guarantee shall be effected with an insurer or other person providing security approved for this purpose by [the State where the certificate is issued] [any Contracting State].

6. The insurance or security shall cover the entire period of the shipper's liability.

7. [Certificates issued in a Contracting State in accordance with this Article shall be accepted in the other Contracting States for all purposes covered by the present Convention. Nevertheless] a Contracting State may at any time request consultation with another Contracting State should it believe that an insurer or other person providing security approved by such State in accordance with paragraph 5 is not financially capable of meeting the obligations imposed by the Convention.

8. Any claim for compensation for damage under this Convention may be brought directly against the insurer or other person providing financial security for the shipper's liability for damage. In such a case the defendant may, irrespective of the fact whether or not the shipper shall be entitled to limit his liability, avail himself of the limit prescribed in Article 5, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the shipper) which the shipper himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the damage resulted from the wilful misconduct of the shipper himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the shipper against him nor may he dispute any fact indicated in the certificate issued by him. The defendant shall in any event have the right to require the shipper to be joined in the proceedings. CLC VII(8)

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available in the first place for the satisfaction of claims under this Convention. CLEE 8(4)

10. Where the shipper is a Contracting State [or, in case a Contracting State is a Federal State, a state, republic or canton of such State,] the shipper shall not be required to maintain insurance or other financial security to cover its liability. CLEE 8(5)

Identical with Article 12 of Alternatives I and II

Article 9

1. The owner shall ensure that no consignment of hazardous substances is taken over for carriage on board his ship, unless a certificate has been issued in accordance with the requirements of Article 8.

2. If the owner does not prove that such certificate has been issued with respect to the consignment in question or does not reveal the identity of the shipper, he shall be deemed also to be the shipper for the purpose of this Convention.

3. However, paragraph 2 shall not apply if the owner proves that the shipper failed to inform him of the hazardous nature of the substance, that he had no reasonable grounds to suspect that the particulars furnished by the shipper were inaccurate and that he had no reasonable means of checking these particulars. For the purposes of this paragraph the owner shall be liable for the act, neglect and default of any person rendering service in connection with the exploitation of the ship, performed within the scope of his employment.

Claims and actions

Identical with Article 13(1) of Alternatives I and II

Article 10

1. Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within [three] years from the date at which the person suffering the damage knew or ought reasonably to have known of the damage. However, in no case shall an action be brought after [six] years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the [six] years' period shall run from the date of the first such occurrence. CLC VIII CLEE 10

Similar to Article 13(2) of Alternatives I and II

2. [Notwithstanding paragraph 1, any right of recourse of the shipper against the owner shall in no case be extinguished before the expiry of a period of [six] months as from the date on which the person seeking recourse acquired knowledge of the bringing of an action against him under this Convention.]

Identical with
Article 15 of
Alternative I
and Article 14
of Alternative II

Article 11

CLC IX
CLEE 11

1. Where an incident has caused damage [in the territory, including the territorial sea] of one or more Contracting States, or preventive measures have been taken, actions for compensation may only be brought in the courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.

2. Each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation.

3. After a fund has been constituted under Article 5 the courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

Identical with
Article 16 of
Alternatives I
and II

Article 12

CLC X
CLEE 12

1. Any judgement given by a court with jurisdiction in accordance with Article 11 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State, except:

(a) where the judgement was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present his case.

2. A judgement recognized under paragraph 1 shall be enforceable in each Contracting State as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Supersession clause

Identical with
Article 17 of
Alternatives I
and II

Article 13

CLC XII

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which the Convention is opened for signature, but only to the extent that such conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of Contracting States to non-Contracting States arising under such conventions.

ANNEX X
INFORMAL PROPOSAL
FINLAND

Draft Resolution

The Third United Nations Conference on the Law of the Sea,

Referring to Paragraph 3 of Article 236 of the present Convention,

Bearing in mind, that a number of international conventions call for the establishment of international rules governing the responsibility and liability for pollution damages,

Noting that the issue concerning international responsibility of States is under consideration from the general point of view in the International Law Commission,

Noting also that specific questions concerning responsibility and liability for pollution damage to the marine environment are being dealt with by several international organizations including UNEP and IMCO,

Taking into account that a variety of rules on responsibility and liability for pollution damage to the marine environment are contained in several international conventions in force,

Recognizing the need to create an international regime to govern the responsibility and liability to ensue from any type of marine pollution incidents to ensure the proper implementation of the present Convention,

Recognizing further the complex nature of the issue and the limited possibilities for its exhaustive consideration at the present Conference,

[Requests] the General Assembly of the United Nations to convene, upon due preparations involving competent international bodies and organizations, a Diplomatic Conference after the entry into force of the present Convention and within [ten] years from the signing of the Final Act of the Third United Nations Conference on the Law of the Sea, in order to establish, with respect to marine pollution incidents, an international convention on the criteria and procedures for the determination of liability, the assessment of damage, the payment of compensation and the settlement of related disputes.

ANNEX XI

PROTOCOL TO THE INTERNATIONAL CONVENTION ON CIVIL
LIABILITY FOR OIL POLLUTION DAMAGE, 1969 */

THE PARTIES TO THE PRESENT PROTOCOL,

BEING PARTIES to the International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on 29 November 1969;

HAVE AGREED AS FOLLOWS:

Article I

For the purpose of the present Protocol:

1. "Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1969.
2. "Organization" has the same meaning as in the Convention.
3. "Secretary-General" means the Secretary-General of the Organization.

Article II

Article V of the Convention is amended as follows:

- (1) Paragraph 1 is replaced by the following text:

"The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount of 133 units of account for each ton of the ship's tonnage. However, this aggregate amount shall not in any event exceed 14 million units of account."

- (2) Paragraph 9 is replaced by the following text:

9(a) The "unit of account" referred to in paragraph 1 of this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in paragraph 1 shall be converted into the national currency of the State in which the fund is being constituted on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

9(b) Nevertheless, a Contracting State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) of this Article may, at the time of ratification, acceptance,

*/ The Protocol was prepared by the conference to revise the unit of account provisions of the 1969 International Convention on Civil Liability for Oil Pollution Damage in London on 19 November 1976. For the text of the Final Act of the Conference, see IMCO publication 77.05.E.

approval of or accession to the present Convention, or at any time thereafter, declare that the limits of liability provided for in paragraph 1 to be applied in its territory shall, in respect of any one incident, be an aggregate of 2,000 monetary units for each ton of the ship's tonnage provided that this aggregate amount shall not in any event exceed 210 million monetary units. The monetary unit referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of these amounts into the national currency shall be made according to the law of the State concerned.

9(c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in paragraph 1 as is expressed there in units of account. Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument referred to in Article IV and whenever there is a change in either.

Article III

1. The present Protocol shall be open for signature by any State which has signed the Convention or acceded thereto and by any State invited to attend the Conference to Revise the Unit of Account Provisions of the Convention on Civil Liability for Oil Pollution Damage, 1969, held in London from 17 to 19 November 1976. The Protocol shall be open for signature from 1 February 1977 to 31 December 1977 at the Headquarters of the Organization.

2. Subject to paragraph 4 of this Article, the present Protocol shall be subject to ratification, acceptance or approval by the States which have signed it.

3. Subject to paragraph 4 of this Article, this Protocol shall be open for accession by States which did not sign it.

4. The present Protocol may be ratified, accepted, approved or acceded to by States Parties to the Convention.

Article IV

1. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the present Protocol with respect to all existing Parties or after the completion of all measures required for the entry into force of the amendment with respect to all existing Parties, shall be deemed to apply to the Protocol as modified by the amendment.

Article V

1. The present Protocol shall enter into force for the States which have ratified, accepted, approved or acceded to it on the ninetieth day following the date on which eight States including five States each with not less than 1,000,000 gross tons of tanker tonnage have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2. For each State which subsequently ratifies, accepts, approves or accedes to it, the present Protocol shall enter into force on the ninetieth day after the deposit by such State of the appropriate instrument.

Article VI

1. The present Protocol may be denounced by any Party at any time after the date on which the Protocol enters into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.
3. Denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

Article VII

1. A Conference for the purpose of revising or amending the present Protocol may be convened by the Organization.
2. The Organization shall convene a Conference of Parties to the present Protocol for the purpose of revising or amending it at the request of not less than one-third of the Parties.

Article VIII

1. The present Protocol shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) Inform all States which have signed the present Protocol or acceded thereto of:
 - (i) each new signature or deposit of an instrument together with the date thereof;
 - (ii) the date of entry into force of the present Protocol;
 - (iii) the deposit of any instrument of denunciation of the present Protocol together with the date on which the denunciation takes effect;
 - (iv) any amendments to the present Protocol;
 - (b) Transmit certified true copies of the present Protocol to all States which have signed the present Protocol or acceded thereto.

Article IX

As soon as the present Protocol enters into force, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article X

The present Protocol is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared and deposited with the signed original.

DONE AT LONDON this nineteenth day of November one thousand nine hundred and seventy-six.

IN WITNESS WHEREOF the undersigned */ being duly authorized for that purpose have signed the present Protocol.

*/ Signatures omitted.

ANNEX XII

Comparative table of the different wordings used in the Informal Composite Negotiating Texts of the Third United Nations Conference on the Law of the Sea

DOC. A/CONF.62/WP.8/PART III (7 May 1975)	DOC. A/CONF.62/WP.8/Rev.1/PART III (6 May 1976)	A/CONF.62/WP.10 (11 July 1977)	A/CONF.62/WP.10/Rev.1 (28 April 1979)
<p>Art. 41 (Responsibility and liability)</p> <p>1. States have the responsibility to ensure that activities under their jurisdiction or control do not cause damage to areas under the jurisdiction of other States or to the marine environment of other States and shall, in accordance with principles of international law, be liable to other States for such damage.</p> <p>2. States have the responsibility to ensure that activities under their jurisdiction or control do not cause damage to the marine environment beyond areas where States exercise sovereign rights in accordance with this Convention.</p> <p>3. When necessary, States shall co-operate in the development of international law relating to the protection and preservation of the marine environment in establishing inter alia criteria and procedures for the determination of liability, the assessment of damage, the payment of compensation and the settlement of related disputes.</p>	<p>Art. 44 (Responsibility and liability)</p> <p>1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law for damage attributable to them resulting from violations of these obligations.</p> <p>2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by persons, natural and juridical, under their jurisdiction.</p> <p>3. States shall co-operate in the development of international law relating to criteria and procedures for the determination of liability, the assessment of damage, the payment of compensation and the settlement of related disputes.</p>	<p>Art. 236 (Responsibility and liability)</p> <p>1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law for damage attributable to them resulting from violations of these obligations.</p> <p>2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by persons, natural or juridical, under their jurisdiction.</p> <p>3. States shall co-operate in the development of international law relating to criteria and procedures for the determination of liability, the assessment of damage, the payment of compensation and the settlement of related disputes.</p>	<p>Art. 235 (Responsibility and liability)</p> <p>1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.</p> <p>2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.</p> <p>3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation such as compulsory insurance or compensation funds.</p>

ANNEX XIII

Excerpts from document A/CONF.62/WP.10/Rev.1 of the
Third United Nations Conference on the Law of the Sea.

Article 31
Responsibility of the flag State for damage caused by
a warship or other government ship operated for
non-commercial purposes

The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law.

Article 39
Duties of ships and aircraft during their passage

1. -

(b) Refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering straits, or in other manner in violation of the principles of international law embodied in the Charter of the United Nations;

2. -

(b) Comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.

Article 42
Laws and regulations of States bordering
straits relating to transit passage

1. -

(a) The safety of navigation and the regulation of marine traffic, as provided in article 41;

(b) The prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;

Article 43
Navigation and safety aids and other improvements and
the prevention, reduction and control of pollution

(b) For the prevention, reduction and control of pollution from ships.

Article 44
Duties of States bordering straits

States bordering straits shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which it has knowledge. There shall be no suspension of transit passage.

Article 54

Duties of ships and aircraft during their passage, research and survey activities, duties of the archipelagic State and laws and regulations of the archipelagic State relating to archipelagic sea lanes passage

Articles 39, 40, 42 and 44 apply mutatis mutandis to archipelagic sea lanes passage.

Article 56

Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. -

(iii) the preservation of the marine environment.

Article 113

Breaking or injury of a submarine cable or pipeline

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 114

Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or a pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 115

Indemnity for loss incurred in avoiding injury to a submarine cable or pipeline

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Article 117

Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas

All States have the duty to adopt, or to co-operate with other States in adopting such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 139
Responsibility to ensure compliance
and liability for damage

1. States Parties shall have the responsibility to ensure that activities in the Area, whether undertaken by States Parties, or state enterprises, or persons natural or juridical which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with the provisions of this Part. The same responsibility applies to international organizations for activities in the Area undertaken by such organizations. Without prejudice to applicable principles of international law and article 21 of annex II damage caused by the failure of a State Party to carry out its responsibilities under this Part shall entail liability. A State Party shall not however be liable for damage caused by any failure to comply by a person whom it has sponsored under article 153, paragraph 2(b), if the State Party has taken all necessary and appropriate measures to secure effective compliance under article 153, paragraph 4.
2. A group of States Parties or a group of international organizations, acting together, shall be jointly and severally responsible under these articles.
3. States Parties shall take appropriate measures to ensure that the responsibility provided for in paragraph 1 shall apply mutatis mutandis to international organizations.

Article 145
Protection of the marine environment

With respect to activities in the Area, necessary measures shall be taken in order to ensure effective protection for the marine environment from harmful effects which may arise from such activities in accordance with Part XIII. To that end the Authority shall adopt appropriate rules, regulations and procedures for inter alia:

- (a) The prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from the consequences of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities;
- (b) The protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

Article 147
Accommodation of activities in the Area
and in the marine environment

1. Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.
2. Stationary and mobile installations relating to the conduct of activities in the Area shall be subject to the following conditions:
 - (a) Such installations shall be erected, emplaced and removed solely in accordance with the provisions of this Part and subject to rules and regulations adopted by the Authority. The erection, emplacement and removal of such installations shall be the subject of timely notification through Notices to Mariners or other generally recognized means of notification;

(b) Such installations shall not be located in the Area where they may obstruct passage through sea lanes of vital importance for international shipping or in areas of intense fishing activity;

(c) Safety zones shall be established around such installations with appropriate markings to ensure the safety both of the installations themselves and of shipping. The configuration and location of such safety zones shall not be such as to form a belt impeding the lawful access of shipping to particular maritime zones or navigation along international sea lanes;

(d) Such installations shall be used exclusively for peaceful purposes.

(e) Such installations shall not possess the status of islands. They shall have no territorial sea, nor shall their presence affect the determination of territorial or jurisdictional limits of any kind.

3. Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.

Article 150

Policies relating to activities in the Area

Activities in the Area shall be carried out in accordance with the provisions of this Part in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international co-operation for the over-all development of all countries, especially the developing countries and with a view to ensuring:

(a) orderly and safe development and rational management of the resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;

(b) the expanding of opportunities for participation in such activities consistent particularly with articles 144 and 148;

(c) participation in revenues by the Authority and the transfer of technology to the Enterprise and developing countries as provided for in this Convention;

(d) increasing availability of the minerals produced from the resources of the Area as needed, in conjunction with minerals produced from other sources, to ensure supplies to consumers of such minerals;

(e) just and stable prices remunerative to producers and fair to consumers for minerals produced both from the resources of the Area and from other sources, and promoting equilibrium between supply and demand;

(f) the enhancing of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and preventing monopolization of the exploration and exploitation of the resources of the Area; and

(g) the protection of developing countries for adverse effects on their economies or on their export earnings resulting from a reduction in the price of affected mineral, or in the volume of that mineral exported, to the extent that such reductions are caused by activities in the Area, as provided in article 151.

Article 192
General obligation

States have the obligation to protect and preserve the marine environment.

Article 194
Measures to prevent, reduce and control pollution
of the marine environment

1. States shall take all necessary measures consistent with this Convention to prevent, reduce and control pollution of the marine environment from any source using for this purpose the best practicable means at their disposal and in accordance with their capabilities, individually or jointly as appropriate, and they shall endeavour to harmonize their policies in this connection.
2. States shall take all necessary measures to ensure that activities under their jurisdiction or control are so conducted that they do not cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.
3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:
 - (a) Release of toxic, harmful and noxious substances, especially those which are persistent:
 - (i) from land-based sources;
 - (ii) from or through the atmosphere;
 - (iii) by dumping.
 - (b) Pollution from vessels, in particular for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
 - (c) Pollution from installations and devices used in exploration or exploitation of the natural resources of the sea-bed and subsoil, in particular for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
 - (d) Pollution from other installations and devices operating in the marine environment, in particular for preventing accidents and dealing with emergencies ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.
4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities pursuant of the rights and duties of other States exercised in conformity with this Convention.

5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other marine life.

Article 195

Duty not to transfer damage or hazards or transform
one type of pollution into another

In taking measures to prevent, reduce and control pollution of the marine environment, States shall so act as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

Article 198

Notification of imminent or actual damage

A State which becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations, global or regional.

Article 225

Duty to avoid adverse consequences in the
exercise of the powers of enforcement

In the exercise of their powers of enforcement against foreign vessels under this Convention, States shall not endanger the safety of navigation or otherwise cause any hazard to a vessel, or bring it to an unsafe port or anchorage, or cause an unreasonable risk to the marine environment.

Article 232

Liability of States arising from
enforcement measures

States shall be liable for damage or loss attributable to them arising from measures taken pursuant to section 6 when such measures were unlawful or exceeded those reasonably required in the light of available information. States shall provide for recourse in their courts for actions in respect of such damage or loss.

Article 235

Responsibility and liability

1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.
2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.
3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation such as compulsory insurance or compensation funds.

Article 237Obligations under other conventions on the
protection and preservation of the
marine environment

1. The provisions of this Part shall be without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.
2. Specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be applied in a manner consistent with the general principles and objectives of this Convention.

Article 248Duty to provide information
to the coastal State

States and competent international organizations which intend to undertake marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall, not less than six months in advance of the expected starting date of the research project, provide that State with a full description of:

- (a) the nature and objectives of the research project;
- (b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;
- (c) the precise geographical areas in which the activities are to be conducted;
- (d) the expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate;
- (e) the name of the sponsoring institution, its director, and the person in charge of the research project; and
- (f) the extent to which it is considered that the coastal State should be able to participate or to be represented in the research project.

Article 249Duty to comply with certain conditions

1. States and competent international organizations when undertaking marine scientific research in the exclusive economic zone or on the continental shelf of a coastal State shall comply with the following conditions:
 - (a) Ensure the rights of the coastal State, if it so desires, to participate or be represented in the research project, especially on board research vessels and other craft or installations, when practicable, without payment of any remuneration to the scientists of the coastal State and without obligation to contribute towards the costs of the research project;
 - (b) Provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;

(c) Undertake to provide access for the coastal State, at its request, to all data and samples derived from the research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;

(d) If requested, assist the coastal State in assessing such data and samples and the results thereof;

(e) Ensure, subject to paragraph 2, that the research results are made internationally available through appropriate national or international channels, as soon as feasible;

(f) Inform the coastal State immediately of any major change in the research programme;

(g) Unless otherwise agreed remove the scientific installations or equipment once the research is completed.

2. This article is without prejudice to the conditions established by the laws and regulations of the coastal State for the granting of consent where the coastal State, notwithstanding the provisions of article 246 nevertheless grants consent to the project in question.

Article 279

Obligation to settle disputes by peaceful means

The States Parties shall settle any dispute between them relating to the interpretation or application of this Convention in accordance with paragraph 3 of article 2, and shall seek a solution through the peaceful means indicated in paragraph 1 of article 33, of the Charter of the United Nations.

Article 281

Obligation to exchange views

1. If a dispute arises between States Parties relating to the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to exchange views regarding settlement of the dispute through negotiations in good faith or other peaceful means.

2. Similarly, the parties shall proceed to an exchange of views whenever a procedure for the settlement of a dispute has been terminated without a settlement of the dispute, or where a settlement has been reached and the circumstances require further consultation regarding the manner of its implementation.

Article 282

Obligations under general, regional or special agreements

If States Parties which are parties to a dispute relating to the interpretation or application of this Convention have accepted, through a general, regional or special agreement or some other instrument or instruments, an obligation to settle such dispute by resort to a final and binding procedure, such dispute shall, at the request of any party to the dispute, be referred to such procedure. In this case any other procedure provided in this Part shall not apply, unless the parties to the dispute otherwise agree.

Article 21
Liability

Any responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor shall lie with the Contractor, account being taken of contributory factors by the Authority. Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority shall lie with the Authority, account being taken of contributory factors by the Contractor. Liability in every case shall be for the actual amount of damages.

Statutes of the Enterprise

Article 2
Relationship to the Authority

Nothing in this Convention shall make the Enterprise liable for the acts or obligations of the Authority, or the Authority liable for the acts or obligations of the Enterprise.

Article 3
Limitation of Liability

No member of the Authority shall be liable by reason only of its membership for the acts or obligations of the Enterprise.